

## THIRD SESSION OF THE PREPARATORY COMMITTEE ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 27 MARCH – 7 APRIL 2017

The third 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, 27 March, at the UN Headquarters in New York and will continue until Friday, 7 April. 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 out 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 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, 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 (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.

**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 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 ILBI 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, 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.

**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.

### **INTERSESSIONAL HIGHLIGHTS**

**UN BIODIVERSITY CONFERENCE:** The UN Biodiversity Conference was held from 2-17 December 2016, in Cancun, Mexico. The CBD Conference of Parties (COP) adopted decisions: providing guidance on mainstreaming biodiversity into fisheries; taking note of voluntary practical guidance on preventing and mitigating the impacts of marine debris; and calling for further consolidation of existing guidance on marine spatial planning

(MSP). On ecologically or biologically significant marine areas (EBSAs), the COP welcomed voluntary practical options for further enhancing scientific methodologies and approaches for the description of areas meeting EBSA criteria; and called for developing procedures within the Convention to modify EBSAs already described and to describe new areas, and for strengthening the scientific credibility and transparency of the EBSA process.

The CBD COP also noted rapid advances regarding the use of digital sequence information on genetic resources, recognizing the importance of addressing this matter in the CBD framework in a timely manner; and decided to consider any potential implications of the use of digital sequence information on genetic resources for the three CBD objectives intersessionally, for consideration at the next COP meeting, and for the objectives of the Nagoya Protocol, for consideration at the next meeting of its COP serving as the Meeting of the Parties (COP/MOP).

The Nagoya Protocol COP/MOP also requested the Secretariat to continue to engage with relevant ongoing processes and policy debates, including in the World Health Organization (WHO), the Commission on Genetic Resources for Food and Agriculture (CGRFA), the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), and others, to collect information on current discussions on the relationship between the use of digital sequence information on genetic resources and access and benefit-sharing (ABS). The COP/MOP also requested a study into criteria for identifying specialized ABS instruments.

**CGRFA 16:** At the sixteenth session of the CGRFA, which was held from 30 January to 3 February 2017, in Rome, Italy, delegates agreed to request the Secretariat to conduct an exploratory, fact-finding scoping study on "digital sequence information," and also to submit that study to the CBD COP.

**PREPARATORY MEETING FOR THE OCEAN CONFERENCE:** The Preparatory Meeting for the Ocean Conference: Our Oceans, Our Future: Partnering for the Implementation of Sustainable Development Goal 14 (Conserve and sustainably use the oceans, seas and marine resources for sustainable development) convened at UN Headquarters in New York, from 15-16 February 2017. Delegates considered the themes for seven partnership dialogues, which will convene during the Ocean Conference, and exchanged views on elements for a "call for action" that will result from the Conference, including potential reference to the BBNJ process.

**IPBES-5:** The fifth session of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, held from 7-10 March 2017 in Bonn, Germany, discussed the evolution of thinking on ecosystem services and noted that "nature's contributions to people" will be used in the Platform's current and future assessments, to reflect a pluralistic approach combining different worldviews. In addition, the Plenary approved the approach for recognizing and working with indigenous and local knowledge.

**ITPGRFA:** The sixth meeting of the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the ITPGRFA Multilateral System (MLS) of ABS, which convened from 14-17 March 2017, in Rome, Italy, continued its work towards developing measures to increase user-based payments and contributions to the Treaty's Benefit-Sharing Fund, including a proposed subscription system, as well as additional measures to enhance the functioning of the MLS. In addition, the Working Group held a brief discussion on genetic information associated with material accessed from the MLS.