

Third Session of the Intergovernmental Conference (IGC) on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction: 19-30 August 2019

The third session of the Intergovernmental Conference (IGC) on an international legally binding instrument under the UN Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) opens Monday, 19 August 2019, at UN Headquarters in New York. At this penultimate scheduled meeting of the IGC, delegates will continue their discussions to address the topics identified in the package agreed in 2011 with the goal of adopting the new agreement in 2020.

Expectations for the Meeting

This session of the IGC will have before it the draft text of an agreement under UNCLOS on BBNJ, prepared by IGC President Rena Lee (Singapore). The draft contains treaty language capturing the 2011 package elements on:

- marine genetic resources (MGRs), including questions on benefit-sharing;
- area-based management tools (ABMTs), including marine protected areas (MPAs);
- environmental impact assessments (EIAs); and
- capacity building and marine technology transfer.

There is also a section outlining general provisions, as well as new draft provisions pertaining to dispute settlement, non-parties to the agreement, and final provisions.

The IGC is expected to draw on the recommendations from the BBNJ Preparatory Committee (PrepCom) that completed its work in 2017, as well as from the first two sessions of the IGC held in September 2018 and March-April 2019. Calling for a new meeting format at the end of IGC-2, many delegates had expressed hope that a more informal meeting setting would facilitate greater progress on some of the sticking points of the discussions. Thus for IGC-3, delegates are expected to meet in a combination of plenary sessions, informal working groups, and “informal-informals” over the two weeks to conduct text-based negotiations on issues such as: the scope of the instrument, including to what extent digital sequence information or derivatives will be addressed, as well as whether or not fish and fisheries will have a place in the agreement; whether mandatory or voluntary benefit-sharing measures would be carried out on a monetary and/or non-monetary basis; and the overarching principles governing the future international legally binding

instrument, in particular the common heritage of humankind and the freedom of the high seas. This meeting is the third of the four IGC sessions decided by UN General Assembly resolution 72/249.

Origins of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond 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 around seamounts, hydrothermal vents, sponges, and cold-water corals, while concerns grow about the increasing anthropogenic pressures posed by existing and emerging activities, such as fishing, mining, marine pollution, 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.

Following more than a decade of discussions convened under the United Nations General Assembly, the Assembly, in its resolution 72/249 of 24 December 2017, decided to convene an IGC to elaborate the text of an ILBI under UNCLOS on the conservation and sustainable use of BBNJ, with a view to developing the instrument as soon as possible. The IGC will meet initially for four sessions, with the fourth session in the first half of 2020.

Key Turning Points

Working Group: Established by General Assembly resolution 59/24 of 2004, the *Ad Hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of BBNJ served to exchange views on institutional coordination, the

need for short-term measures to address illegal, unregulated, and unreported (IUU) fishing and destructive fishing practices, MGRs, marine scientific research (MSR) on marine biodiversity, MPAs, and EIAs. It met three times from 2006 to 2010.

The “Package”: 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.

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 69th 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.

A Legally Binding Instrument: Between 2014 and 2015, the Working Group engaged in interactive substantive debates on the scope, parameters, and feasibility of an international instrument under UNCLOS. At its ninth meeting, the Working Group reached consensus on recommendations for a decision to be taken at the 69th 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.

The Preparatory Committee: Established by General Assembly resolution 69/292, the PrepCom was mandated 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 72nd session whether to convene an IGC to elaborate the text of the ILBI. The PrepCom considered the scope of an ILBI and its relationship with other instruments, guiding approaches and principles, as well as the elements of the package. In spite of diverging views with a wide majority of countries arguing that the PrepCom had exhausted all efforts to reach consensus, the PrepCom outcome that was eventually adopted by consensus comprised:

- non-exclusive elements of a draft ILBI text that generated convergence among most delegations;
- a list of main issues on which there is divergence of views, with the indication that both do not reflect consensus; and
- a recommendation to the UN General Assembly to take a decision, as soon as possible, on convening an IGC.

IGC Organizational Meeting: The IGC organizational meeting took place from 16-18 April 2018. Delegates agreed to: focus IGC-1 on substantive discussions based on the elements of the package; take consensus-based decisions on the preparation process of a zero draft; and mandate the President to prepare a concise document that identifies areas for further discussion, that does not contain treaty text, and that would not constitute the zero draft.

IGC-1: At the first meeting of the IGC, held from 4-17 September 2018, delegates made some progress in clarifying positions on the package elements and tabling more detailed options for a process

on ABMTs. President Lee suggested preparing a document that would facilitate text-based negotiations, containing treaty language and reflecting options on the four elements of the package, taking into account all inputs during IGC-1 as well as the Preparatory Committee’s report, well in advance of IGC-2.

IGC-2: Delegates convened for the second session of the IGC from 25 March to 5 April 2019. They deliberated on the basis of the IGC President’s Aid to Negotiations, which contained options structured along the lines of the 2011 package. In their discussions on the President’s Aid, delegates continued to elaborate their positions on issues previously identified as areas of divergence, achieving convergence on a few areas, such as: the need to promote coherence, complementarity, and synergies with other frameworks and bodies; benefit-sharing as part of conservation and sustainable use; and EIAs being mutually supportive with other instruments. But important issues still remained outstanding as aforementioned. In the closing session, several called on IGC President Rena Lee to prepare and circulate a “no-options” document containing treaty text, and to revise the meeting format, calling for a more informal set-up to facilitate in-depth negotiations.

Intersessional Highlights

Before the Blue COP: This workshop convened from 10-11 April 2019, in Madrid, Spain, organized by the Because The Ocean Initiative. Participants discussed examples of ocean action that can contribute to mitigating and adapting to climate change, improving the resilience of coastal communities, and increasing the conservation of marine ecosystems. The workshop featured sessions and roundtables that addressed, among other issues: the state of knowledge concerning climate and ocean change; synergies and gaps in climate and ocean actions; and national perspectives on the ocean-climate nexus.

ICP-20: The twentieth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP-20) convened from 10-14 June 2019 at UN Headquarters in New York, under the theme, “Ocean Science and the UN Decade of Ocean Science for Sustainable Development.” ICP-20 focused on two main areas: identifying the sources, uses of, and gaps related to the ocean science for sustainable use of marine resources, and international cooperation and coordination needed to address gaps in ocean science. The Intergovernmental Oceanographic Commission of the UN Educational, Scientific and Cultural Organization (IOC-UNESCO), is coordinating the design of the Decade of Ocean Science for Sustainable Development.

2nd Part of the 25th Annual Session of the International Seabed Authority (ISA): This meeting convened from 15-26 July 2019 at ISA Headquarters in Kingston, Jamaica. At this meeting, where the Authority celebrated its 25th anniversary, both the Authority’s Council and Assembly met. The Council focused on the development of the draft exploitation regulations on deep-seabed mining. It delved into these regulations with discussion specifically focusing on how to ensure the Mining Code protects and preserves the marine environment. The Assembly considered the implementation of the Authority’s Strategic Plan 2019-2023, including adoption of the High-Level Action Plan and the corresponding performance indicators to measure implementation. It also adopted criteria and guidelines for applications for observer status in the work of the Authority to strengthen transparency, participation, and openness.