



NINTH MEETING OF THE WORKING GROUP ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 20-23 JANUARY 2015

The ninth meeting of the *Ad Hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (hereafter, the Working Group) opens today and will continue until 23 January 2015 at the UN Headquarters in New York. The meeting is the last of three meetings (April 2014, June 2014 and January 2015) convened by the UN General Assembly through its resolution 68/70 to discuss the scope, parameters and feasibility of a possible new international instrument on marine biodiversity in areas beyond national jurisdiction (BBNJ) under the UN Convention on the Law of the Sea (UNCLOS). The meeting is expected to produce recommendations for a decision to be taken at the sixty-ninth session of the UN General Assembly on the development of a new international instrument on BBNJ under UNCLOS, as mandated by the 2012 UN Conference on Sustainable Development (Rio+20).

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.

In resolution 59/24 of 2004, the General Assembly established an *ad hoc* open-ended informal working group to study issues relating to the conservation and sustainable use of BBNJ, 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 a package of recommendations

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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 in 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 the transfer of marine technology.

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 to 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 before it 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 a commitment for 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 emerged in the Working Group, for consideration at the next meeting.

INTERSESSIONAL HIGHLIGHTS

CBD COP 12: The twelfth meeting of the CBD Conference of the Parties (CBD COP 12, 6-17 October 2014, Pyeongchang, Republic of Korea) encouraged governments to make use of the scientific information, as well as information from indigenous and local communities, regarding the description of areas meeting the criteria for ecologically or biologically significant marine areas (EBSAs), including the information in the EBSA repository and information-sharing mechanism, when carrying out marine spatial planning, development of representative MPA networks, and application of other area-based management measures in marine and coastal areas. The COP also invited governments "who find it appropriate to do so, individually, in accordance with national legislation, bilaterally or jointly at the regional level, and, where appropriate, in collaboration with competent intergovernmental organizations, in accordance with international law, including UNCLOS, to undertake scientific and technical analysis of the status of marine and coastal biodiversity in areas within governments' respective jurisdictions and intergovernmental organizations' mandates, described as meeting the EBSA criteria and contained in the EBSA repository."

NAGOYA COP/MOP 1: The first meeting of the COP serving as the meeting of the Parties (MOP) to the Nagoya Protocol (13-17 October 2014, Pyeongchang, Republic of Korea) invited further work, including commissioning a study, on Article 10 of the Protocol, which calls upon parties to consider the need for and modalities of a global multilateral benefit-sharing mechanism for the utilization of genetic resources and traditional knowledge that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent, with a view to supporting the conservation of biodiversity and the sustainable use of its components globally.

UNGA 68: In resolution 69/245 on oceans and the law of the sea, the General Assembly reaffirmed the Rio+20 commitment on BBNJ; recalled its decision that, to meet the Rio+20 commitment, the Working Group meet for three meetings of four days each, with the possibility of the General Assembly deciding that additional meetings would be held, if needed, within existing resources; and reaffirmed its request to make recommendations to the General Assembly at the January 2015 meeting of the Working Group on the scope, parameters and feasibility of an international instrument under UNCLOS.