



# Earth Negotiations Bulletin

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## MARINE BIODIVERSITY WORKING GROUP HIGHLIGHTS: TUESDAY, 20 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 BBNJ opened on Tuesday, 20 January 2015, at the UN Headquarters in New York. Delegates heard opening statements, addressed organizational matters and delivered general statements. In the afternoon, no delegation offered further views on the scope, parameters and feasibility of a new international instrument on BBNJ, so delegates started exchanging views on a Co-Chair's non-paper containing draft elements for recommendation to the General Assembly, which had been circulated to national delegations in December 2014.

### OPENING

Co-Chair Liesbeth Lijnzaad (Netherlands) opened the meeting. Speaking on behalf of the UN Secretary-General, Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and UN Legal Counsel, noted that differences still remain in the deliberations on BBNJ, and called upon delegates to "crystallize ideas in areas of convergence" in order to meet the deadline to submit recommendations to the General Assembly.

Co-Chair Palitha Kohona (Sri Lanka) highlighted growing support for a new legally binding instrument on BBNJ under UNCLOS, noting that any such instrument should be holistic and take into account the needs of both developing and developed countries. Co-Chair Lijnzaad reported that a synthesis of the key ideas discussed in the two previous Working Group meetings had been circulated to national delegations in December 2014 as a Co-Chairs' non-paper containing draft elements of a recommendation to the General Assembly, as well as an updated compilation of state submissions.

Co-Chair Lijnzaad introduced, and delegates approved without amendment, the provisional agenda (A/AC.276/L.15) and the draft format, annotated provisional agenda and organization of work (A/AC.276/L.16).

### GENERAL STATEMENTS

South Africa, for the G77/CHINA, emphasized: the legal gap concerning UNCLOS provisions on access and benefit-sharing (ABS) from MGRs; the common heritage of mankind as part of customary international law and guiding principle for a new implementing agreement; and the 2011 package, including benefit-sharing taking into account IPRs, MSR, capacity building and technology transfer. Morocco, on behalf of the

AFRICAN GROUP, argued that the adoption of a legally binding agreement under UNCLOS is the only way to resolve issues of exploitation of BBNJ. Trinidad and Tobago, on behalf of the CARIBBEAN COMMUNITY (CARICOM), stressed the need for a new implementing agreement under UNCLOS that builds upon the common heritage principle and strengthens UNCLOS by addressing gaps on the conservation and use of MGRs in ABNJ. Underlining that the time for action is now, Maldives for the ALLIANCE OF SMALL ISLAND DEVELOPING STATES (AOSIS) called for launching negotiations on a new implementing agreement as soon as possible.

Italy for the EUROPEAN UNION (EU) urged an intergovernmental conference be convened as soon as possible and, supported by SINGAPORE, said it should complete work within an agreed deadline. MOROCCO called for convening an intergovernmental conference to draft a legally binding instrument on BBNJ, stressing that the 2011 package has already been agreed by the General Assembly and should not be re-opened. JAMAICA said that there is sufficient momentum for the Working Group to recommend that the General Assembly mandate formal negotiations towards an international agreement building upon UNCLOS, the ecosystem approach and the common heritage of mankind.

MEXICO noted growing consensus in different regions on the need for a new legally binding instrument to complement UNCLOS and international customary law; and called for a pragmatic approach to formal negotiations based on the framework of the existing legal regime, cost-efficiency, and the promotion of economic incentives. COSTA RICA suggested that recommendations to the General Assembly should be general in calling for an intergovernmental conference, accompanied by a preparatory process, on the basis of the 2011 package. VENEZUELA called attention to states that are not party to UNCLOS, noting a new instrument on BBNJ could be developed under the CBD. PERU suggested ensuring that a new agreement be open to all states.

AUSTRALIA suggested making clear and concrete consensus recommendations to the General Assembly providing succinct guidance on scope and parameters of a new implementing agreement, as well as on a possible process and timelines for inclusive and transparent negotiations, including a preparatory process for an intergovernmental conference. NEW ZEALAND argued that the increasing pressures and cumulative impacts on BBNJ, as well as the legal gaps in and fragmentation of the existing legal framework, prove the need for a new implementing agreement. SINGAPORE recommended postponing

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discussion of specific concepts to the formal negotiations of an implementing agreement. SRI LANKA emphasized the need to address IPRs, and opportunities for sharing the results of MSR.

ICELAND reiterated his position that a new international instrument should focus on legal gaps, such as MGRs, and cautioned against re-opening issues that are already subject to the existing international regime, such as fisheries. CANADA stated that she remains to be convinced that launching negotiations on a new instrument is the best way to urgently achieve actual results. She suggested that potential negotiations should be guided by: the need to preserve the balance of interests, and existing rights and obligations; the respect of regional and sectoral frameworks; targeted and realistic measures based on best available scientific knowledge; the avoidance of excessively bureaucratic processes for MSR; inclusion of intergovernmental, non-governmental and industry stakeholders; and a sufficient timeframe for fully debating options. JAPAN said that the conservation and sustainable use of BBNJ should not undermine existing international frameworks. The RUSSIAN FEDERATION expressed skepticism over the need for a new agreement, and favored excluding high-seas fishing and identifying legal gaps before negotiations begin. The US opined that a persuasive case for a new implementing agreement has yet to be made, arguing that the 2011 package is no more than a list of potential topics to be covered. The REPUBLIC OF KOREA remarked that consensus is yet to be achieved on several issues, including on how to ensure compatibility with existing instruments and bodies without affecting their mandate. Arguing that resolving all issues falls outside the Working Group's mandate, GUATEMALA stated that launching negotiations on a new implementing agreement is a long-term, but necessary, commitment.

Stating that negotiations on an implementing agreement should "only begin if conditions are right," CHINA noted that a new instrument on BBNJ should not include legally binding mechanisms or be too specific, called for caution in referring to mechanisms for transboundary EIAs and a dispute settlement mechanism, and opposed setting a timetable for negotiating an implementing agreement. INDIA said a viable legal regime is desirable, but cautioned that rights associated with high seas freedoms cannot be compromised by MPAs and other area-based conservation measures. ARGENTINA argued that challenges related to BBNJ cannot be left to unilateral action or organizations with limited membership.

The CONVENTION ON MIGRATORY SPECIES (CMS) drew attention to CMS COP 11 outcomes of relevance to the Working Group, including Resolution 11.25 on advancing ecological networks to address the needs of migratory species, as well as studies on correlations between migratory species and EBSAs. The CBD highlighted CBD COP 12 decisions on EBSAs, ocean acidification and underwater noise, and the Nagoya Protocol COP/MOP 1 decisions on a global multilateral benefit-sharing mechanism and the ABS Clearing-house. The INTERGOVERNMENTAL OCEANOGRAPHIC COMMISSION reported on the Global Ocean Observing System, capacity-building and training activities. The UN ENVIRONMENT PROGRAMME (UNEP) reported on relevant activities under the Regional Seas Programme. The FOOD AND AGRICULTURE ORGANIZATION (FAO) reported on work on, *inter alia*, the Code of Conduct for Responsible Fisheries and on deep-sea fish stocks and vulnerable marine ecosystems. The PERMANENT COMMISSION FOR THE SOUTH PACIFIC called for a legally binding agreement under UNCLOS, providing for universal participation and including CBD principles and concepts.

IUCN pointed to the potentially historic importance of the week's deliberations. GREENPEACE called for a strong implementing agreement negotiated in a time-bound manner. WWF recommended an integrated global framework for the governance of BBNJ, to ensure the wellbeing of vulnerable communities that rely on oceans for their livelihoods. The SYLVIA EARLE ALLIANCE/MISSION BLUE lamented that even if the ocean is large and resilient, it is not too big to fail, emphasizing that delegates "have a chance, right now, this week, to encourage governance to safeguard the high seas, as never before in history and maybe, as never again."

### CO-CHAIRS' NON-PAPER

MEXICO, BARBADOS, NEW ZEALAND, SOUTH AFRICA and others welcomed the Co-Chairs' non-paper as a good basis for discussion, with SOUTH AFRICA noting the need to differentiate elements that are not part of the 2011 package. NORWAY emphasized the need to adopt a consensus recommendation, suggesting, with ICELAND, going beyond the 2011 package in the recommendation to the General Assembly to ensure clarity and predictability on the kind of instrument and its relationship with existing agreements.

Explaining that the non-paper reflects states' views, including the 13 submitted prior to this meeting, Co-Chair Kohona invited further views on the non-paper. The G77/CHINA asked for more time. NEW ZEALAND, supported by EU, favored reference to the progress made within the Working Group. She considered it appropriate to draw on elements of the non-paper that referred to recognizing, respecting and complementing frameworks and mandates of existing organizations, noting that succinct recommendations could make it easier to reach consensus, while acknowledging the importance of drawing on knowledge, material and views produced to date.

NORWAY recommended finding a balance between specificity and the risk of losing detail, and including references to the mandate of the Working Group in the recommendation. The EU prioritized: indicating that the 2011 package is the basis for the scope of a new implementing agreement; reaffirming the role of UNCLOS; and avoiding duplication of efforts and alterations of the rights and obligations of states under existing agreements. He suggested adding reference to "modern governance principles for the sustainable use and conservation of BBNJ."

### IN THE CORRIDORS

The (would-be) last meeting of the Working Group started with reshaped positions on the need for a new implementing agreement on biodiversity beyond areas of national jurisdiction. The vast majority of delegates favor such an agreement, at least in broad strokes. Yet a minority of "still unconvinced" states do not see definitive, convincing arguments that a new treaty would provide the urgent and most effective response to the multiple threats and increasing pressures on deep-sea biodiversity. From both sides, however, commitment was voiced on finding consensus on a way forward.

On the sidelines, quite a few seasoned participants appeared hopeful that the long-awaited launch of formal negotiations towards a new implementing agreement under UNCLOS will finally materialize. Some pointed to the recent serendipitous scientific and media reports highlighting that while there are "clear signs that humans are harming oceans to a remarkable degree" leading to "major extinctions" in the deep seas, this catastrophic trend can still be reversed. In principle, three days are left for the Working Group to live up to these expectations.