

Committee of Permanent Representatives
Subcommittee Meeting
Thursday, 27 April 2023
10:00 – 13:00, 15:00 – 18:00 (GMT+3)
Conference Room 1
Hybrid meeting

Agenda item 3: Briefing on the outcomes of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction.

This background document has been developed by the Secretariat to inform the Committee of Permanent Representatives on the outcomes of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction. More specifically, it includes detailed information on the following aspects of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction:

- Background on ABNJ / BBNJ;
- What is ABNJ / BBNJ and why was a new instrument needed?
- What was agreed?
- Marine genetic resources (MGRs) including benefit-sharing;
- Area Based Management Tools (ABMTs) including Marine Protected Areas;
- Environmental Impact Assessment (EIA);
- Capacity Building and the Transfer of Marine Technology (CB&TT);
- Institutional & Governance Arrangements.

Following the presentation, Member States and Stakeholders are invited to engage in an exchange of views with the Secretariat regarding the outcomes of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction.

UNEP Meeting Report: Key Outcomes of the Intergovernmental Conference (IGC-5.2) on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ) (20 February - 4 March, 2023)

Background:

At the resumed 5th Session (IGC5.2), delegates worked through multiple parallel work streams (plenaries, informal informals, small groups) to address, negotiate and resolve numerous outstanding “sticky” issues as flagged below. These issues ranged from benefit-sharing arrangements, decision-making provisions, relationship with other international bodies and frameworks (IFBs), the role of potential bodies to be established under the agreement, as well as general overarching provisions. Interests and positions differed vastly between UNCLOS and non-UNCLOS parties, developed vs developing States, States with activities in ABNJ vs States without. Regional issues surfaced alongside differences on principled issues such as application of “Common Heritage” vs. “Freedom of the High Seas.” Some Members wanted to push detailed decision-making on governance and institutional mechanisms to the first Conference of the Parties, others wanted to safeguard or ‘foolproof’ the treaty text in advance. In the end, delegates persevered through difficult and at times controversial conversations to arrive at final agreement text for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. Advanced, final, unedited text is available [here](#).

What is ABNJ / BBNJ and why was a new instrument needed?

Marine Areas Beyond National Jurisdiction (ABNJ) are those areas of ocean for which no one nation has sole responsibility for management. Biodiversity Beyond National Jurisdiction (BBNJ) is the biodiversity found in these areas. ABNJ ecosystems are subject to negative impacts from many sectors including shipping, fishing and mining, the impacts of which were compounded by a lack of comprehensive legal instruments and coherent governance.

What was agreed?

After 6 years of formal negotiations, UN members finally agreed on text for an international legally binding instrument under the United Nations Convention on the Law of the Sea on The Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction.

States agreed, in principle, that no issues of substance would be reopened or changed. The agreement text is currently undergoing technical editing/legal review to be followed by translation into the 6 UN languages to ensure uniformity and harmonize wording. The 5th session will be resumed in June 2023 to formalize adoption of the agreement, but no further substantive discussions will take place. **The Agreement shall enter into force 120 days after the date of deposit of the 60th instrument of ratification**, approval, acceptance or accession.

Marine genetic resources (MGRs) including benefit-sharing

The objectives of this section are to ensure 1) the **fair and equitable sharing of benefits** arising from activities with respect to MGRs and digital sequence information (DSI) in ABNJ for **the conservation and sustainable use of marine biological diversity in ABNJ**; 2) building and development of the capacity of parties to carry out activities with respect to MGRs and DSI and 3) the development and transfer of marine technology. **Important to note that this will not apply to fishing regulated under relevant international law and fishing-related activities or fish or other living marine resources*¹.**

Prior to the collection of in situ MGR, information including the objective, location and method of collection will be submitted to the Clearing House Mechanism². **MGR which have traditional**

¹ *Denotes a particularly “sticky” issue in the negotiations

² A clearing-house mechanism shall be created to serve as a centralized, open-access platform to enable parties to access and exchange information relating to implementation of BBNJ Agreement. (Article 51)

knowledge associated with them shall only be accessed with the free, prior and informed consent and involvement of Indigenous Peoples and local communities*.

Monetary benefits from the utilization of MGRs and DSI, including commercialization, shall be shared fairly and equitably. The COP shall decide the modalities for the sharing of monetary benefits and an access and benefit sharing committee will be established to make recommendations to the COP. After the entry into force of this Agreement, developed states parties shall make annual contributions to a special fund^{3*}.

Area Based Management Tools (ABMTs) including Marine Protected Areas

The objectives of ABMTs including MPAs are to: 1) **conserve and sustainably use*** areas requiring protection, **including through ecologically representative and well-connected networks of MPAs**⁴. 2) **Strengthen cooperation and coordination** in the use of ABMTs, including MPAs, among states and relevant international frameworks and bodies (IFBs)⁵. 3) **Protect, preserve, restore and maintain biodiversity and ecosystems**, including with a view to enhancing their productivity and health, and **strengthen resilience to stressors, including climate change, ocean acidification and marine pollution**. 4) **Support food security** and other socio-economic objectives, **including the protection of cultural values***.

In proposing an ABMT parties are required to collaborate and consult, as appropriate, with relevant stakeholders, including states and global, regional, subregional and sectoral bodies, the scientific community, private sector and Indigenous Peoples and local communities. **Proposals for ABMTs must include a management plan, including its geographical area, and stating why the area is of cultural^{6*} or biological importance using set criteria. Proposals are reviewed by the Scientific and Technical Body who make recommendations to COP** and will go out for public consultation, with states IFBs and society.

Final decisions regarding the establishment of ABMTs will be sought via consensus. If no consensus is reached, decisions and recommendations shall be taken by a three-quarter majority. **ABMTs come into force 120 days after agreement at COP. During the 120 days, a party may write to the Secretariat making an objection with respect to a decision adopted by the COP and that decision shall not be binding on that Party***. The Party is expected to adopt alternative measures or approaches that are equivalent in effect to the decision to which it has objected and shall not adopt measures nor take actions that would undermine the effectiveness of the decision. **'Emergency' area-based management tools can be established in the event of an ecological disaster to prevent further damage***. These measures last for 2 years.

Environmental Impact Assessment (EIA)

The objective of this section is to 1) **establish the processes, thresholds and other requirements for conducting and reporting EIAs**; 2) Ensure that activities are conducted to **prevent, mitigate and manage significant adverse impacts**; 3) support the consideration of cumulative impacts and impacts in areas within national jurisdiction; and 4) **build and strengthen the capacity of parties, particularly developing states parties, to prepare, conduct and evaluate EIAs and strategic environmental assessments (SEAs)**.

³ The modalities for the Special Fund will be decided at the first COP but funds will essentially be used to implement the Treaty. See Article 52 for more detail.

⁴ In the final agreement, an MPA is defined as a geographically defined marine area that is designated and managed to achieve specific long-term biodiversity conservation objectives and may allow, where appropriate, sustainable use provided it is consistent with the conservation objectives.

⁵ IFBs refer to relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies (as articulated in Article 4). The BBNJ Agreement shall be interpreted and applied in a manner that “does not undermine relevant IFBs and that promotes coherence and coordination.”

⁶ Insert ‘sticky issue’ around cultural value here.

The threshold for conducting an EIA shall be when a planned activity “may have more than a minor or transitory effect”* on the marine environment or the effects of the activity are unknown or poorly understood. The Scientific and Technical body shall determine if thresholds (including cumulative) have been reached or exceeded and the impact upon the ABNJ (from national and ABNJ based activities). **Parties won't need to conduct an EIA if they can show they are covered under other IFBs***. In this case the Scientific and Technical Body will collaborate with the IFBs [RE?] regarding the EIA assessment and publish the results to the clearing-house mechanism (CHM).

States have an obligation to conduct an EIA in national waters when the activity may cause substantial pollution of or significant and harmful changes to the marine environment in ABNJ*. **However, the party will be responsible for determining if it goes ahead***, after taking account of the EIA report and showing all reasonable efforts have been made to reduce the impact.

Capacity Building and the Transfer of Marine Technology (CB&TT)

The objective of this section is to 1) **Assist parties in particular developing states parties, in implementing the provisions of the agreement**; 2) **enable inclusive, equitable and effective cooperation and participation** in the activities undertaken; 3) **develop marine scientific and technological capacity, in particular developing states parties**, including through access to marine technology by, and the transfer of marine technology to, developing states.

Parties agree they will cooperate and strengthen coordination with and between IFBs, the private sector, civil society, Indigenous peoples and local communities and **ensure that the provision of CB&TT is not conditional on onerous reporting requirements***. **CB&TT should be a country-driven, transparent, participatory and gender-responsive*** and shall build upon and not duplicate existing programmes and be guided by lessons learned. **Levels of resources and support shall be identified through needs assessments on an individual case-by-case, subregional or regional basis. Such needs and priorities may be self-assessed or facilitated through a CB&TT committee and the CHM.** CB&TT shall be monitored and reviewed periodically by the CB&TT committee: 1) assessing needs and priorities of developing countries; 2) reviewing the support required, provided and mobilized, and gaps; 3) identifying and mobilizing funds under established financial mechanism.

Institutional & Governance Arrangements

- An institutional structure including modalities for the COP, a stand-alone secretariat, a Scientific and Technical Body, and a clearing-house mechanism (CHM) was established.
- The Clearing House Mechanism shall consist primarily of an open-access platform with modalities to be determined by the COP. It will serve to enable parties to access, provide and disseminate information relating to: MGR; establishment and implementation of ABMTs including MPAs; EIAs and requests for CB&TT and related opportunities – including matching of capacity-building needs with the support available.
- The negotiating Parties agreed to the following funds to support BBNJ implementation: (i) a voluntary trust fund to facilitate participation of representatives of developing States Parties in the meetings of the bodies under this Agreement, (ii) a special fund established by the Conference of the Parties, and (iii) the GEF Trust Fund. The GEF Trust Fund will support national ratification and implementation of the convention once negotiations have concluded, with the agreement of the GEF Council.
- The Agreement shall enter into force 120 days after the date of deposit of the sixtieth instrument of ratification, approval, acceptance or accession.
- COP-1 shall be convened by the UN Secretary-General no later than one year after the entry into force of this Agreement and will be open to observers. UN DOALOS shall perform the secretariat functions until the new secretariat commences its functions.