

Committee of the Permanent Representatives
Subcommittee meeting
Nairobi, 4 December 2023
10:00 –13:00 and 15:00 – 18:00 (GMT+3)
Hybrid meeting
Conference Room 2 (in person)
and Microsoft Teams (online)

Agenda item 6: Briefing on the Agreement on Marine Biodiversity of Areas Beyond National Jurisdiction.

This background document has been developed by the Division for Ocean Affairs and the Law of the Sea of the UN Office of Legal Affairs (DOALOS), which performs, on an interim basis, secretariat functions for the *Agreement 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* (BBNJ Agreement) adopted on 19 June 2023, to inform the Committee of Permanent Representatives of an overview of that Agreement, including immediate next steps towards supporting its early entry into force, and its relation to the marine and biodiversity aspects of the UNEP Programme of Work.

The Committee will be invited to take note of the information provided and to invite UNEP to cooperate with DOALOS in promoting a broader understanding of the Agreement and preparing for its entry into force.

Briefing on the Agreement on Marine Biodiversity of Areas Beyond National Jurisdiction

Background document

Date: 4 December 2023

Presenters: Mr. Vladimir Jares, Director, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations; Ms. Charlotte Salpin, Senior Legal Officer, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations.

Format: Remote

Location: United Nations Headquarters, New York.

I. Background information

1. On 19 June 2023, the *Agreement 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* (the “BBNJ Agreement”) was adopted by consensus, by an intergovernmental conference convened under the auspices of the United Nations.
2. The BBNJ Agreement was opened for signature for two years from 20 September 2023 until 20 September 2025. As at end of October, it has been signed by 81 States and the European Union, including by 12 African States, 18 Asia-Pacific States, 11 Eastern European States, 16 Latin American and Caribbean States, and 22 Western European and other States.
3. Building on the United Nations Convention on the Law of the Sea (UNCLOS), of which it becomes the third implementing agreement, this historic Agreement significantly strengthens the international legal framework for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, namely the high seas and the international seabed area (the “Area”).
4. The Agreement sets out: specific measures for the conservation and sustainable use of BBNJ; specific modalities to establish, implement and monitor those measures; and institutional arrangements to oversee the implementation of the Agreement and of these measures.
5. It addresses a package of four key issues:
 - *Marine genetic resources, including the fair and equitable sharing of benefits:* It provides for obligations to share monetary and non-monetary benefits arising from activities with respect to marine genetic resources of areas beyond national jurisdiction and digital sequence information on these resources in a fair and equitable manner.
 - *Area-based management tools, including marine protected areas:* It sets up procedures for the establishment, implementation and monitoring of area-based management tools, including marine protected areas.
 - *Environmental impact assessments:* It complements and further develops the obligation under UNCLOS to conduct environmental impact assessments by establishing processes, thresholds and other requirements for conducting and reporting assessments with the aim

of preventing, mitigating and managing significant adverse impacts on the marine environment.

- *Capacity-building and the transfer of marine technology*: It contains essential provisions on capacity-building and the development and transfer of marine technology, including the obligation of States to cooperate in this respect and to provide, within their capabilities, resources to support capacity-building and the transfer of marine technology, taking into account the special circumstances of small island developing States and of least developed countries.

6. The BBNJ Agreement also addresses a number of *cross-cutting issues*, including institutional arrangements with the establishment of a Conference of the Parties, a Scientific and Technical Body, and other subsidiary bodies. It also establishes a secretariat, the seat of which will be decided by the Conference of the Parties at its first meeting, as well as a Clearing-House Mechanism to be managed by the secretariat.

7. In addition, the BBNJ Agreement establishes a funding mechanism to assist developing States Parties in its implementation, including through funding in support of capacity-building and the transfer of marine technology. The Conference of the Parties may also consider the possibility of establishing additional funds to finance rehabilitation and ecological restoration, whereas funding may be provided through both public and private sources.

II. Relationship of the information provided to UNEP's Programme of Work

8. By the area of coverage, nearly two thirds of the ocean are “areas beyond national jurisdiction” and, as such, fall within the scope of application of the BBNJ Agreement. These areas are home to rich biodiversity and unique marine species and provide the planet and humankind with many goods and services. At the same time, they suffer from multiple cumulative anthropogenic pressures, ranging from overfishing and destructive fishing practices to pollution of all kinds and the effects of climate change. These areas are comparatively vastly underexplored and have traditionally gained little attention and funding in terms of research.

9. Given the significant contributions of the ecosystems of these areas in climate regulation, the carbon cycle and food security, among others, the BBNJ Agreement, as the first comprehensive, cross-sectoral ocean treaty in decades after UNCLOS, is key in addressing the triple planetary crisis of climate change, biodiversity loss and pollution, which is put forward in UNEP's Medium-Term Strategy for 2022-2025.

10. In addition, by establishing specific mechanisms for cross-sectoral cooperation to implement its various provisions, the BBNJ Agreement has the potential to introduce more integrated, holistic approaches to the management of ocean activities. Its effective and timely implementation can also make crucial contributions to other ocean-related processes, such as the 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 14, the Kunming-Montreal Global Biodiversity Framework, as well as the ongoing negotiations on a legally binding instrument on plastics pollution, including in the marine environment.

11. Specifically, the swift entry into force and early implementation of the BBNJ Agreement will significantly contribute to the following sub-programmes of the Medium-Term Strategy:

- Climate action, in particular outcomes 1A and 1B and direct outcomes 1.1 and 1.4;
- Nature action, in particular outcomes 2B, 2C and direct outcomes 2.1, 2.2, 2.4, 2.6, 2.7, 2.8, 2.9, 2.11, 2.13, 2.14 and 2.16;
- Chemicals and pollution action, in particular outcome 3C and direct outcomes 3.3, 3.5 and 3.13;
- Science-policy interface; and
- Environmental governance.

III. Next steps

12. The opening for signature of the BBNJ Agreement marked the beginning of a new phase with the next steps being its entry into force and the convening of the first meeting of the Conference of the Parties, no later than one year after the Agreement enters into force.

13. The BBNJ Agreement will enter into force 120 days after the date of deposit of the sixtieth instrument of ratification, approval, acceptance or accession. To achieve this threshold, much remains to be done.

14. On 1 August 2023, the General Assembly of the United Nations adopted resolution 77/321, in which it welcomed the adoption of the Agreement and approved the assumption by the Secretary-General of the United Nations of the functions assigned to him under the Agreement, including the performance, through the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations (DOALOS), of secretariat functions until such time as the secretariat to be established under the Agreement commences its functions. It is noted in this respect that DOALOS served as secretariat of the Intergovernmental conference which adopted the BBNJ Agreement. It serves as the secretariat for UNCLOS and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA). The Division also discharges the responsibilities entrusted to the Secretary-General by UNCLOS and UNFSA, as well as the mandates provided to it in resolutions of the General Assembly on oceans and the law of the sea and on sustainable fisheries. With the United Nations Legal Counsel, it also exercises the role of focal point of UN-Oceans, the inter-agency coordination mechanism on ocean and coastal issues within the United Nations system.

15. Pursuant to the specific requirement in resolution 77/321 for DOALOS to promote a better understanding of the Agreement and prepare for its entry into force, DOALOS has developed a programme of activities to that end. These include awareness-raising and outreach, capacity-building and technical assistance activities in support of efforts by States to become parties to the Agreement.

16. Building synergies and partnerships with and among relevant instruments and frameworks and relevant global, regional, subregional and sectoral bodies, including existing multilateral environmental agreements under the auspices of UNEP, will be critical in order to

ensure consistent messaging, avoid duplication of efforts and resources, and ensure coherence and coordination in the support provided.

17. Further actions to support DOALOS efforts towards preparing for the early into force and effective implementation of the BBNJ Agreement, in which UNEP could play a critical role, among others, include:

- Liaising with the Focal Points in the Ministries of Environment, as well as with other relevant stakeholders, to raise awareness about the BBNJ Agreement at the national level and promote efforts towards its ratification and swift implementation; and
- Supporting efforts seeking to ensure appropriate funding for the promotion of a better understanding of the BBNJ Agreement and for its future implementation.

IV. Recommendations/relevance for the CPR

18. The entry into force of the BBNJ Agreement is of critical importance to tackling the triple planetary crisis of climate change, biodiversity loss and pollution. It is also anticipated that it will generate momentum on other ocean issues of relevance to UNEP's work, such as the development of an international legally binding instrument on plastic pollution, including in the marine environment.

19. The CPR is invited to take note of the information provided and to invite UNEP to cooperate and coordinate with DOALOS in efforts to promote a better understanding of the BBNJ Agreement and prepare for its entry into force.