

**UNITED
NATIONS**

EP

UNEP/WBRS.17/INF7



**United Nations
Environment
Programme**



Distr.: General
28 September 2015

Original: English

**The 17th Global Meeting for the Regional Seas
Conventions and Action Plans
Istanbul, Turkey 20 October - 22 October 2015**

**Briefing note on Marine Biodiversity in
Areas Beyond National Jurisdiction (ABNJ)**

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Briefing to Executive Director

To:	Mr. Achim Steiner, Executive Director, UNEP Mr. Ibrahim Thiaw Deputy Executive Director	Date:	1 September 2015
Cc:	Elliot Harris, ASG, NYO Jacqueline McGlade, Director, DEWA Michele Candotti, Chef de Cabinet		
From:	Mette L. Wilkie <i>Mette L. Wilkie</i> Director, DEPI Elizabeth Mrema <i>Elizabeth Mrema</i> Director, DELC	Reference:	DEPI/DELC/TN/ /BR/ cm
Subject:	Marine Biodiversity in Areas Beyond National Jurisdiction (ABNJ)		

This brief intends to report expected implications to UNEP following the General Assembly's Resolution: 69/292 on "Development of an international legally-binding instrument under the United Nations Convention on Law of Sea on the conservation and sustainable use of marine biological diversity the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction", which was adopted without a vote on 19 June 2015.

Background:

Resolution 69/292 (attached) is based on recommendations from the Ad-hoc Open Ended Informal Working Group whose objective was to study issues related to marine biodiversity in areas beyond national jurisdiction.

With this Resolution, the GA has decided to develop an international legally-binding instrument under the United Nations Convention on Law of the Seas (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. For this purpose, the GA has also decided to establish a preparatory committee, to prepare recommendations and work on the treaty.

The preparatory committee process will be open to all Members States and specialized agencies, while others partners are invited to participate as observers. The preparatory committee work will continue until the 2017 meeting twice every year. At the end of this process, in 2017, the GA will convene an intergovernmental conference that will consider the recommendations of the preparatory committee and elaborate on the text of the legally-



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binding treaty/instrument. Negotiations of this instrument would address topics identified in the package agreed in 2011 by the Ad hoc Informal Working Group, namely “the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including marine genetic resources, benefits sharing, area-based management tools, marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology.”

In the Ad hoc Informal Working Group, several countries, including USA, Canada, Iceland, Norway, Japan, Russia and the Republic of Korea expressed their views on the need for a new legally binding instrument under UNCLOS. The G-77 and European Union also strongly supported a new legally-binding instrument.

UNEP’s mandate on the conservation of the marine biodiversity in Areas Beyond National Jurisdiction has not been explicitly recognized by UNEP and member states; except the assessment of the state of the marine environment as well as in our legal work. CBD mandates also do not cover specifically ABNJ, except the recent initiatives of describing and identifying Ecologically or Biologically Significant Areas. However, some of the UNEP coordinated regional seas clearly include ABNJ in their geographic coverages (Northeast Atlantic, Mediterranean, South Pacific, Arctic, Southern Ocean) while some others, recently, decided to work on the biodiversity in ABNJ through their COP/Ministerial decisions and start studying issues in relation to this topic (Southeast Atlantic, Western Indian Ocean, West, Central and Southern Africa).

Based on the regional seas initiatives, DEPI has been instrumental during the Ad Hoc Informal Working Group in promoting good practices of the regional seas where marine protected areas in ABNJ were designated with legal input from DELC. Based on these experiences and practices, DEPI also explored a possible future regional approach to be embedded in the future discussion of the international legally-binding instrument. DEPI also launched the Partnership for Regional Ocean Governance, in January 2015, together with the Institute of Advanced Sustainability Studies and the Institut du développement durable et des relations internationales. This partnership includes the regional approach to biodiversity in ABNJ and has started working within two regional seas as pilot programmes in this area. These activities fall under the Ecosystem Management sub-programme.

Under UNEP’s Montevideo Programme IV, areas beyond national jurisdiction are specifically mentioned in relation to encouraging the development of legal instruments for water resources. DELC’s current mid-term review process of the Montevideo Programme IV includes a plan to consult experts on this topic. On 9 and 10 July 2015, DELC organized an international environmental law seminar on “Laws to promote environmental sustainability of oceans and seas” in Panama City. The seminar focused on emerging issues of international concern, including ABNJ.

It is arguable that unless and until the work under UNCLOS produces a treaty, there will be a gap in international environmental law. In fact, up to date, only about one percent of the planet’s marine areas are protected under international environmental law. Further, there are some lacunae in the UNCLOS regime, under which the bottom of the sea in ABNJ is the common heritage of humankind. At that time, UNCLOS had not predicted that deep seabed biodiversity would be used for biotechnology. Now, there are few international laws that relate to the exploitation and protection of the marine genetic resources of the deep seabed.



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Meanwhile there is a proliferation of treaties and international bodies that, in one way or another, relate in part to marine resources and biodiversity in ABNJ. DELC wants to explore if the international law community should wait for the completion of the work under the aegis of UNCLOS.

Major topics and sensitivities involved:

1. This discussion eventually includes the governance of areas beyond national jurisdiction. Sectoral mandates and governance were clearly coordinated under the UNCLOS for fishery, navigation, ocean observation, and underwater cables/pipelines. However, as long as these sectoral activities have an impact on the conditions and functions of biodiversity in ABNJ, the future discussion on this issue should involve all these sectors currently active in ABNJ. The final report of the Global Ocean Commission (2014) recommended that a move be made from RFMOs (Regional Fishery Management Organisations) to Regional Ocean Management Organisations (ROMOs) where more integrated management can take place. At this stage, the above mentioned report does not have much impact on the discussions in New York, but needs careful review in relation to the future role of regional seas programmes in biodiversity in ABNJ.
2. It is not clear thus far how this process will affect the Sustainable Development Goals, especially those related to oceans and seas. While starting the Prepcom process itself would be an important milestone as envisaged in the Future We Want (paragraph 162), it is not clear how the Member States will relate this process to the SDG-Oceans and monitor their progress in achieving the related goals.
3. A number of UN member States, notably the USA, are not parties to UNCLOS, while UNCLOS designates freedom of access to ABNJ and the resources. If and when a future legally-binding instrument is adopted under UNCLOS, non-UNCLOS parties' rights need to be ensured. The GA Resolution stipulates that neither participation in the negotiations, nor their outcome, will affect the legal status of non-parties to UNCLOS.
4. UNEP has been advocating for regional approaches to be included in a future legal instrument as a means of implementing ABNJ. Such regional approaches should be combined with any global mechanism in applying area-based management tools, including marine protected areas and in coordinating and regulating sector activities. UNEP's regional approach to ABNJ based on the regional seas programmes and regional fishery bodies, involves working closely with global sectoral regulatory bodies, such as International Maritime Organisation (IMO) and International Seabed Authority (ISA).

UNEP together with its partners need to present a possible regional approach as it advocates a role for regional seas organizations in future efforts towards an international legally-binding instrument within the Global Partnership on Regional Ocean Governance which UNEP is leading..



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5. Up to now, Member's States have had strong ownership in this issue and have thus been reluctant to receive input from UNEP and other technical UN organizations. Some Regional Seas Member States have already responded through their respected COPs.

UNEP's strategic engagement in the Preparatory Committee: 2016-2017

1. UNEP will be instrumental in disseminating good practices of selected regional seas conventions and processes (Marine Protected Areas in Northeast Atlantic, Specially Protected Areas of Mediterranean Importance, etc.), and ongoing initiatives of some other regional seas (Southeast Atlantic, Nairobi Convention, and Abidjan Convention), so that the States in the negotiations would be fully informed on these good practices and ongoing initiatives through tailor made documentation.
2. UNEP, through the Partnership for Regional Ocean Governance, will further define and promote a possible regional approach to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. The regional approach should not be separated from the global approach which should be included in the future instrument, but should instead be complementary. This approach should be further discusses and developed through the partnership.
3. Under the assessment programme, including the Transboundary Waters Assessment, regional seas indicator programmes and state of the marine environment reporting, UNEP will continue providing information on the marine biodiversity and ecosystems in ABNJ.
4. UNEP will be proactive in the discussion of regional ocean governance, which eventually involves ABNJ environmental governance. UNEP's basis in this forum will be the regional seas in partnership with regional fishery bodies and other regional and global sectoral bodies, such as IMO, ISA and WMO.
5. UNEP will continue to closely cooperate with the Secretariat of the Convention on Biological Diversity on issues of mutual interests, such as ecological and biodiversity data sharing in ABNJ.
6. UNEP will engage in the debate from a legal point of view and will want to bring the notions of the environmental rule of law, common heritage of humankind, and the global commons into the negotiations.
7. Through the Regional Seas Global meetings DELC and DEPI intend to contribute to this endeavour in terms of setting Regional Seas ownership and strategies for upcoming negotiations.

Points of contact:

1. Takehiro Nakamura, MCEB/DEPI
2. Barbara Ruis, DELC/ROE

Attachment

1. GA Resolution 69/292



General Assembly

Distr.: General
6 July 2015

Sixty-ninth session
Agenda item 74 (a)

Resolution adopted by the General Assembly on 19 June 2015

[without reference to a Main Committee (A/69/L.65 and Add.1)]

69/292. Development of 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

The General Assembly,

Reaffirming the commitment made by Heads of State and Government in paragraph 162 of the outcome document of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, entitled “The future we want”, endorsed by the General Assembly in its resolution 66/288 of 27 July 2012, to address, on an urgent basis, building on the work 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, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including by taking a decision on the development of an international instrument under the United Nations Convention on the Law of the Sea,¹ before the end of the sixty-ninth session of the Assembly,

Noting its request, in paragraph 214 of its resolution 69/245 of 29 December 2014, for the Ad Hoc Open-ended Informal Working Group to make recommendations on the scope, parameters and feasibility of an international instrument under the Convention,

Having considered the recommendations of the Ad Hoc Open-ended Informal Working Group,²

Welcoming the exchange of views on the scope, parameters and feasibility of an international instrument under the Convention and the progress made within the Ad Hoc Open-ended Informal Working Group, within its mandate as established by the General Assembly in its resolution 66/231 of 24 December 2011 and in the light of its resolution 67/78 of 11 December 2012, to prepare for the decision on the

¹ United Nations, *Treaty Series*, vol. 1833, No. 31363.

² A/69/780, annex, sect. I.



development of an international instrument under the Convention to be taken by the Assembly at its sixty-ninth session,

Stressing the need for the comprehensive global regime to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, and having considered the feasibility of developing an international instrument under the Convention,

1. *Decides* to develop an international legally binding instrument under the United Nations Convention on the Law of the Sea¹ on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction and to that end:

(a) *Decides* to establish, prior to holding an intergovernmental conference, a preparatory committee, open to all States Members of the United Nations, members of the specialized agencies and parties to the Convention, with others invited as observers in accordance with past practice of the United Nations, to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under the Convention, taking into account the various reports of the Co-Chairs on the work 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, and that the preparatory committee will start its work in 2016 and, by the end of 2017, report to the Assembly on its progress;

(b) *Decides* that the preparatory committee shall meet for no less than two sessions of a duration of 10 working days each in 2016 as well as in 2017 with full conference services, with the recognition that, with respect to documentation, any documents of the preparatory committee other than the agenda, the programme of work and the report of the preparatory committee shall be considered informal working documents;

(c) *Requests* the Secretary-General to convene the sessions of the preparatory committee in 2016 from 28 March to 8 April and from 29 August to 12 September;

(d) *Decides* that the preparatory committee shall be chaired by one presiding officer, who will be appointed by the President of the General Assembly, in consultation with Member States, as soon as possible;

(e) *Decides* that the preparatory committee shall elect a bureau consisting of two members from each regional group, and that these 10 members shall assist the Chair on procedural matters in the general conduct of his or her work;

(f) *Requests* the President of the Assembly to invite the regional groups to nominate candidates to the bureau as soon as possible;

(g) *Recognizes* the desirability that any legally binding instrument relating to marine biological diversity of areas beyond national jurisdiction under the Convention would secure the widest possible acceptance, and for that reason;

(h) *Decides* that the preparatory committee shall exhaust every effort to reach agreement on substantive matters by consensus;

(i) *Recognizes* the importance of proceeding efficiently in the preparatory committee on the development of the elements of a draft text of an international legally binding instrument under the Convention, and recognizes further that any elements where consensus is not attained, even after exhausting every effort, may

also be included in a section of the recommendations of the preparatory committee to the General Assembly;

(j) Decides that, except as provided for in subparagraph (i) above, the rules relating to the procedure and the established practice of the committees of the General Assembly shall apply to the procedure of the preparatory committee, and that, for the meetings of the preparatory committee, the participation rights of the international organization that is a party to the Convention shall be as in the Meeting of States Parties to the Convention and that this provision shall constitute no precedent for all meetings to which Assembly resolution 65/276 of 3 May 2011 is applicable;

(k) Decides that, before the end of its seventy-second session, and taking into account the aforementioned report of the preparatory committee, it will decide on the convening and on the starting date of an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the preparatory committee on the elements and to elaborate the text of an international legally binding instrument under the Convention;

2. *Also decides* that negotiations shall address the topics identified in the package agreed in 2011, namely the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology;

3. *Recognizes* that the process indicated in paragraph 1 above should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies;

4. *Also recognizes* that neither participation in the negotiations nor their outcome may affect the legal status of non-parties to the Convention or any other related agreements with regard to those instruments, or the legal status of parties to the Convention or any other related agreements with regard to those instruments;

5. *Requests* the Secretary-General to establish a special voluntary trust fund for the purpose of assisting developing countries, in particular the least developed countries, landlocked developing countries and small island developing States, in attending the meetings of the preparatory committee and the intergovernmental conference referred to in paragraph 1 (a) above, and invites Member States, international financial institutions, donor agencies, intergovernmental organizations, non-governmental organizations and natural and juridical persons to make financial contributions to the voluntary trust fund;

6. *Also requests* the Secretary-General to provide the preparatory committee with the necessary assistance for the performance of its work, including secretariat services and the provision of essential background information and relevant documents, and to arrange for support to be provided by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the Secretariat.

*96th plenary meeting
19 June 2015*