

Marine biological diversity of areas beyond national jurisdiction

Legal and policy framework

1. The United Nations Convention on the Law of the Sea (UNCLOS) provides the legal framework within which all activities in the oceans and seas must be carried out, including for the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. It is complemented by two implementing agreements, namely the Agreement relating to Part XI of UNCLOS, which addresses matters related to the Area, and the Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.
2. In addition to UNCLOS and its implementing agreements, a number of international instruments at the global and regional levels are relevant to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. At the global level, in addition to the regulations adopted by the International Seabed Authority for the protection and preservation of the marine environment in the Area, these include instruments related to: biodiversity, such as the Convention on Biological Diversity (CBD); fisheries, such as instruments adopted by the Food and Agriculture Organization of the United Nations (FAO); point and non-point sources of pollution, such as measures adopted in the context of the International Maritime Organization; trade and intellectual property, such as measures considered in the context of the World Trade Organization and the World Intellectual Property Organization.
3. At the regional level, relevant measures include those adopted by regional fisheries management organizations and arrangements (RFMO/As) and by regional seas organizations having competence beyond areas of national jurisdiction.
4. Non-binding instruments also provide policy guidance of relevance to marine biodiversity, including beyond areas of national jurisdiction. These include the resolutions of the General Assembly on oceans and the law of the sea and on sustainable fisheries, as well as the Rio Declaration and Chapter 17 of Agenda 21 adopted at the 1992 United Nations Conference on Environment and Development, the Johannesburg Plan of Implementation (in particular its paragraphs 30-36) adopted in 2002 at the World Summit on Sustainable Development, the outcome document of the 2012 United Nations Conference on Sustainable Development, i.e. *The future we want* (in particular its paragraphs 158-177), and the 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 14 “Conserve and sustainably use the oceans, seas and marine resources for sustainable development”.

6. Further information on the legal and policy aspects can be found in the relevant reports of the Secretary-General (in particular A/60/63/Add.1, A/62/66/Add.2, A/64/66/Add.2 and A/66/70).

Work of the General Assembly 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

7. In the last decade, questions have been raised whether the current framework sufficiently addresses the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. In 2004, the General Assembly established 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 Working Group). In particular, the Working Group was requested (resolution 59/24, paragraph 73) to:

- a) survey the past and present activities of the United Nations and other relevant international organizations with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;
- (b) examine the scientific, technical, economic, legal, environmental, socio-economic and other aspects of these issues;
- (c) identify key issues and questions where more detailed background studies would facilitate consideration by States of these issues; and
- (d) indicate, where appropriate, possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

8. The first meeting of the Working Group was held in New York from 13 to 17 February 2006. Its report is contained in document A/61/65.

9. The second meeting of the Working Group was convened in New York from 28 April to 2 May 2008. At that meeting, as requested by the General Assembly (resolution 61/222, paragraph 91), the Working Group considered:

- (a) The environmental impacts of anthropogenic activities on marine biological diversity beyond areas of national jurisdiction;
- (b) Coordination and cooperation among States as well as relevant intergovernmental organizations and bodies for the conservation and management of marine biological diversity beyond areas of national jurisdiction;

- (c) The role of area-based management tools;
- (d) Genetic resources beyond areas of national jurisdiction; and
- (e) Whether there is a governance or regulatory gap, and if so, how it should be addressed.

10. The report of the second meeting is contained in document A/63/79.

11. The third meeting of the Working Group was held in New York from 1 to 5 February 2010. The Working Group was requested to provide recommendations to the General Assembly (resolutions 63/111, paragraph 127, and 64/71, paragraph 146). As requested by the General Assembly (resolution 64/71, paragraph 142), the Working Group, in the context of its mandate, further considered the relevant legal regime on marine genetic resources in areas beyond national jurisdiction in accordance with UNCLOS, with a view to making further progress on this issue. It also considered issues of marine protected areas and environmental impact assessment processes. The recommendations of the Working Group address: the strengthening of the information base; capacity-building and technology transfer; cooperation and coordination in implementation; cooperation and coordination for integrated ocean management and ecosystem approaches; environmental impact assessments; area-based management tools, in particular marine protected areas; marine genetic resources; and the way forward. The outcome of the third meeting is contained in document A/65/68.

12. The fourth meeting of the Working Group was convened in New York from 31 May to 3 June 2011 to provide recommendations to the General Assembly (resolution 65/37 A, paragraph 163). The General Assembly encouraged the Working Group to improve progress on all outstanding issues on its agenda. As requested by the General Assembly (resolution 65/37 A, paragraphs 165 and 166), the Working Group, in the context of its mandate, focused, in particular, on the relevant legal regime on marine genetic resources in areas beyond national jurisdiction in accordance with UNCLOS, taking into account the views of States on Parts VII and XI of UNCLOS, with a view to making further progress on this issue, as well as issues of marine protected areas and environmental impact assessment processes. The meeting recommended, inter alia, that:

- (a) A process be initiated, by the General Assembly, with a view to ensuring that the legal framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction effectively addresses those issues by identifying gaps and ways forward, including through the implementation of existing instruments and the possible development of a multilateral agreement under UNCLOS;

(b) This process would address the conservation and sustainable use of marine biodiversity in 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, and environmental impact assessments, capacity-building and the transfer of marine technology;

(c) This process would take place: (i) in the existing Working Group; and (ii) in the format of intersessional workshops aimed at improving understanding of the issues and clarifying key questions as an input to the work of the Working Group; and

(d) The mandate of the Working Group be reviewed and, as appropriate, amended, with a view to undertaking the tasks entrusted by the recommendations.

13. The outcome of the meeting is contained in document A/66/119.

14. The fifth meeting of the Working Group was held in New York from 7 to 11 May 2012 to provide recommendations to the General Assembly (resolution 66/231, paragraph 168). The General Assembly had decided to initiate, within the Working Group, the process recommended by the Working Group at its fourth meeting (resolution 66/231, paragraph 167). Accordingly, within the process initiated by the General Assembly, the Working Group, at its fifth meeting, considered the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resource, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, and environmental impact assessments, capacity-building and the transfer of marine technology. The Working Group also considered the identification of gaps and ways forward, with a view to ensuring an effective legal framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, within the process initiated by the General Assembly.

15. The Working Group recommended, inter alia, that the General Assembly, with a view to improving understanding of the issues and to clarifying key questions as an input to the work of the Working Group, request the Secretary-General to convene two intersessional workshops on marine genetic resources and on conservation and management tools, including area-based management and environmental impact assessments. Both workshops would also consider issues related to international cooperation, as well as capacity-building and the transfer of marine technology. The Working Group also recommended that the General Assembly request the Working Group, at its next meeting, to continue to consider, together and as a whole, all issues under its mandate, taking into account the discussions at its meeting in 2012, as well as the input of the intersessional workshops to the work of the Working Group, and provide recommendations to the General Assembly at its sixty-eighth

session for making progress on ways to fulfil the mandate provided for in paragraph 167 of resolution 66/231.

16. The outcome of the meeting is contained in document A/67/95.

17. The intersessional workshops were convened in New York on 2 and 3 May and on 6 and 7 May 2013 (resolution 67/78, paragraph 182). The summary of proceedings at the workshops is contained in document A/AC.276/6.

18. The sixth meeting of the Working Group was convened in New York from 19 to 23 August 2013 to provide recommendations to the General Assembly (resolution 67/78, paragraph 184). As requested by the General Assembly (resolution 67/78, paragraphs 183, 184), the Working Group considered, together and as a whole, all issues under its mandate, taking into account the discussions at its meeting in 2012, as well as the input of the intersessional workshops. The meeting recommended, inter alia, that the General Assembly:

(a) Reaffirm the commitment made by States in “The future we want” 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 marine biodiversity of areas beyond national jurisdiction, including by taking a decision on the development of an international instrument under UNCLOS, and decide to establish a process within the Working Group to prepare for such action;

(b) To prepare for the decision to be taken by the General Assembly at its sixty-ninth session, request the Working Group, within its mandate established by resolution 66/231 and in the light of resolution 67/78, to make recommendations to the Assembly on the scope, parameters and feasibility of an international instrument under UNCLOS;

(c) To this end, decide that the Working Group meet for three meetings of four days each, with the possibility of the General Assembly deciding that additional meetings be held, if needed; and

(d) To inform the deliberations of the Working Group, request the Co-Chairs of the Working Group to invite Member States to submit their views on the scope, parameters and feasibility of an international instrument under UNCLOS.

19. The outcome of the meeting is contained in document A/68/399.

20. The seventh meeting of the Working Group met in New York from 1 to 4 April 2014 (resolution 68/70, paragraphs 199 and 200). The Working Group, in order to prepare for the

decision to be taken at the sixty-ninth session of the General Assembly, considered the scope, parameters and feasibility of an international instrument under UNCLOS, within the mandate established by the General Assembly in its resolution 66/231 and in the light of resolution 67/78, with a view to making recommendations to the Assembly. The outcome of the meeting is contained in document A/69/82.

21. The eighth meeting of the Working Group was held in New York from 16 to 19 June 2014 to continue considering those issues. The outcome of the meeting is contained in document A/69/177.

22. The ninth and last meeting of the Working Group was held in New York from 20 to 23 January 2015. The Working Group recommended to the General Assembly that it, *inter alia*:

- (a) Stress the need for the comprehensive global regime to better address the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction and having considered the feasibility of developing an international instrument under the Convention;
- (b) Decide to develop an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction and, to that end:
 - i. prior to holding an intergovernmental conference, decide to establish a preparatory committee, to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under the Convention, the preparatory committee starting its work in 2016 and, by the end of 2017, reporting to the Assembly on its progress;
 - ii. before the end of the seventy-second session of the General Assembly, and taking into account the aforementioned report of the preparatory committee, 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;
- (c) Decide 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;

- (d) Recognize that the process should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies; and
- (e) Also recognize 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.

23. The outcome of the meeting is contained in document A/69/780.

24. Following-up on the recommendations of the Working Group, the General Assembly adopted, on 19 June 2015, resolution 69/292 entitled “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”.

Preparatory Committee established by resolution 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

25. In its resolution 69/292 of 19 June 2015, the General Assembly decided to develop an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

26. To that end, it decided to establish, prior to holding an intergovernmental conference, a Preparatory Committee, to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under UNCLOS, 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.

27. The Preparatory Committee held two sessions each in 2016 and 2017. At its fourth session, held from 10 to 21 July 2017, the Preparatory Committee adopted its report to the General Assembly, including recommendations (see document A/AC.287/2017/PC.4/2).

Other relevant work of the General Assembly

28. The United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (the Consultative Process) has also addressed several issues of relevance.¹

29. Several General Assembly resolutions on oceans and the law of the sea and on sustainable fisheries also provide relevant policy guidance.² For example, the General Assembly has expressed its concern at the adverse impacts on the marine environment and biodiversity, in particular on vulnerable marine ecosystems, of a number of human activities, such as over-utilization of living marine resources, the use of destructive practices, physical impacts by ships, the introduction of alien invasive species and marine pollution from all sources, including from land-based sources and vessels. The Assembly has also reaffirmed its role relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, noted the work of States and relevant complementary intergovernmental organizations and bodies on those issues, including the CBD and the FAO, and invited them to contribute to its consideration of these issues within the areas of their respective competence.

30. Over the years, the General Assembly has called for a number of specific measures such as:

- developing national, regional and international programmes for halting the loss of marine biodiversity, in particular fragile ecosystems;
- strengthening, in a manner consistent with international law, in particular UNCLOS, the conservation and management of marine biodiversity and ecosystems and national policies in relation to marine protected areas;
- taking further action to address, in accordance with international law, destructive practices that have adverse impacts on marine biodiversity and ecosystems, including seamounts, hydrothermal vents and cold water corals;
- developing and facilitating the use of diverse approaches and tools, including the ecosystem approach, the elimination of destructive fishing practices, the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods, proper coastal and land use and watershed planning, and the integration of marine and coastal areas management into key sectors;
- considering ways to integrate and improve, on a scientific basis, the management of risks to marine biodiversity of seamounts, cold water corals and hydrothermal vents and certain other underwater features within the framework of UNCLOS;
- improving understanding and knowledge of the oceans and the deep sea, including, in particular, the extent and vulnerability of deep sea biodiversity and

¹ See http://www.un.org/depts/los/consultative_process/consultative_process.htm.

² See http://www.un.org/depts/los/general_assembly/general_assembly_resolutions.htm.

ecosystems, by increasing their marine scientific research activities in accordance with UNCLOS;

- investigating how to better address, on a scientific basis, including the application of precaution, the threats and risks to vulnerable and threatened marine ecosystems and biodiversity in areas beyond national jurisdiction;
- developing contingency plans for responding to pollution incidents, as well as other incidents that are likely to have significant adverse effects on the marine environment and biodiversity;
- enhancing scientific activity to better understand the effects of climate change on the marine environment and marine biodiversity and develop ways and means of adaptation, taking into account, as appropriate, the precautionary approach and ecosystem approaches;
- building capacity in the field of marine scientific research taking into account the need to create greater taxonomic capabilities;
- enhancing cooperation, coordination and collaboration relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction; and
- addressing impacts on marine ecosystems within and beyond areas of national jurisdiction, in conformity with international law, including UNCLOS and other applicable instruments, taking into account the integrity of the ecosystems concerned.

31. With particular reference to the impacts of fishing, the General Assembly has called for a number of measures to ensure responsible fisheries in the marine ecosystem, such as:

- regulating bottom fishing activities which would have significant adverse impacts on vulnerable marine ecosystems;
- taking action immediately, individually and through regional fisheries management organizations and arrangements (RFMO/As), and consistent with the precautionary approach and ecosystem approaches, to implement the 2008 FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas in order to sustainably manage fish stocks and protect vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals, from destructive fishing practices, recognizing the immense importance and value of deep sea ecosystems and the biodiversity they contain;
- cooperating to collect and exchange scientific and technical data and information related to the implementation of the measures called for in the relevant General Assembly resolutions to manage deep sea fisheries in areas beyond national jurisdiction and to protect vulnerable marine ecosystems from significant adverse impacts of bottom fishing; and
- cooperating and making efforts to establish, as appropriate, RFMO/As competent to regulate bottom fisheries in areas beyond national jurisdiction where there are no such organizations or arrangements.

32. In the context of the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects (Regular Process), a technical abstract of the First Global Integrated Marine Assessment (first World Ocean Assessment) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction was prepared. The purpose of the technical abstract is to provide scientific, factual background to the issues being discussed in the context of the work of the General Assembly on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction. The abstract provides a synthesis of the information presented in the first World Ocean Assessment.³

³ Available at http://www.un.org/depts/los/global_reporting/global_reporting.htm.