BBNJ Treaty Negotiations 2019

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Panel 1 - Context
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Outline

- Unpacking BBNJ
- Timeline
- Unasked Questions
UNPACKING BBNJ
Scope of BBNJ Negotiations

- UN General Assembly in A/RES/72/249, December 2017, convened an
  intergovernmental conference
- on an **internationally legally binding instrument**
- **under** the UN Convention on the Law of the Sea
- on the **conservation and sustainable use**
- of **marine biological diversity**
- of **areas beyond national jurisdiction** (ABNJ)
Areas Beyond National Jurisdiction

- ABNJ understood to be:
  - High Seas – seaward of outer limits of EEZ
    - 200 M (nm) from baselines from which the breadth of the territorial sea is measured
    - LOS Convention article 57
  - The Area – seaward of outer limits of continental shelves
    - 200 M, or more (ECS) if criteria of article 76(4) is met
Legal Boundaries of the Oceans and Airspace
Global High Seas

- High Seas
- Exclusive Economic Zones

http://www.marineregions.org Consulted on 2014-03-28
Coordinate System: World Robson. Central Meridian: 0°00'
TIMELINE
Legal and Policy Framework

- In the last 15 years, questions have been raised whether the current LOS framework sufficiently addresses the conservation and sustainable use of marine biological diversity 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).
- The Working Group met 9 times between 2006 and 2015.
Preparatory Committee

- Established by UNGA resolution 69/292, 19 June 2015
- PrepCom met four times, twice in 2016 and twice in 2017
Report of PrepCom to GA 71

- Summarized results of four preparatory committee meetings in 2016 and 2017
- Adopted on 21 July 2017 with two recommendations
  - Elements in sections A and B be considered with a view to the development of ILBI neither of which reflect consensus
    - Section A reflects non-exclusive elements that generated convergence among most delegations
    - Section B highlights some main issues with a divergence of views
    - Both sections w/o prejudice to positions of States
  - Decide ASAP on convening of DipCon
  - Document A/AC.287/2017/PC.4/2 on DOALOS website
Decision to Convene DipCon

- A/RES/72/249, 29 December 2017
- Decided to develop an internationally legally binding instrument (ILBI) under the LOS Convention
- -- on the conservation and sustainable use of
- -- marine biological diversity of
- -- areas beyond national jurisdiction, i.e. high seas and the Area
UNGA: Issues for DipCon

- Conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ)
- In particular, together and as a whole [i.e. the 2011 package deal]
- -- Marine genetic resources (MGR), including sharing of benefits (i.e. asset and benefit sharing)
- -- Area-based management tools, including marine protected areas (MPAs)
- -- Environmental impact assessments (EIAs)
- -- Capacity-building and transfer of marine technology
UNGA: Dates for DipCon

- First substantive session of conference held 4-17 September 2018 at UN Headquarters in New York
- Preceded by an organizational meeting 16-18 April 2018 to discuss organizational matters, including the process for preparation of the zero draft of the instrument
- Second substantive session held 25 March-5 April 2019
- Third session to be held 19-30 August 2019
- Fourth session in the first half of 2020
- Additional sessions not precluded but if needed require new UNGA decision
UNGA: DipCon Limitations

- Work and results of DipCon to be fully consistent with LOS Convention
- Not undermine existing relevant legal instruments and frameworks, and relevant global, regional and sectoral bodies
- Exhaust every effort in good faith to reach agreement on substantive matters by consensus
- Otherwise decisions by 2/3rds majority
- Other rules of procedure of UNGA apply
Other Provisions A/72/249

- Non-parties to LOS Convention may participate
- DOALOS to be DipCon secretariat
- All same provisions in A/RES/69/292 convening PrepCom
- New: UNGA President to nominate President-designate of the DipCon
DipCon Organizational Meeting

- First meeting of DipCon was an organizational meeting 16-18 April 2018
- Agenda at https://www.un.org/bbnj/node/313
- Results of organizational meeting
  - Ms Rena Lee, Singapore AGC, elected President
  - Vice Presidents
  - Credentials committee
  - Organization of first substantive session
  - Preparing zero draft of ILBI
- President’s closing statement
First Substantive Session

- Held 14-17 September 2018
- Preceded by the President’s Aid to Discussions, <http://undocs.org/en/A/CONF.232/2018/3>
- President’s Statement at Conclusion of First Substantive Session <http://undocs.org/en/A/CONF.232/2018/7>
President’s Aid to Negotiations

- As promised at close of September 2018 session, President’s provided her 64-page Aid to Negotiations on 3 December 2018, <http://undocs.org/A/CONF.232/2019/1>*
- Document based on statements previously made at PrepCom and earlier DipCon sessions
- Provided a series of options, often including a “no text” option, arranged along lines of the four main elements plus cross cutting issues
Outline of Aid – Elements

- The order elements were taken up in informal working groups at IGC-2:
- Marine Genetic Resources, including questions of sharing of benefits
- Measures such as Area-Based Management Tools, including marine protected areas
- Environmental Impact Assessments
- Capacity-building and Transfer of Marine Technology
Outline of Aid – Cross-Cutting Issues

II. General Elements
1. Use of Terms
2. Scope of Application
3. Objectives
4. Relationship to Convention and other instrument and frameworks and relevant global, regional and sectoral bodies

III. Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction
1. General Principles and Objectives
2. International Cooperation
More Cross-cutting Issues

• IV. Institutional Arrangements
  1. Decision-making body/forum
  2. Scientific/technical body
  3. Other subsidiary bodies
  4. Secretariat
• V. Clearing-house Mechanism
• VI. Review
Facilitators

- Marine Genetic Resources, including the Sharing of Benefits:
  - Ambassador Janine Elizabeth Coye-Felson (Belize)
- Area-based Management Tools, including Marine Protected Areas:
  - Ms Alice Revell (New Zealand)
- Environmental Impact Assessments:
  - Mr René Lefeber (The Netherlands)
- Capacity-building and Transfer of Marine Technology:
  - Ambassador Ngedikes Olai Uludong (Palau)
- Cross-cutting Issues:
  - Ambassador Rena Lee
Second Substantive Session

- Held 25 March-5 April 2019
- President’s Aid to Negotiations was basis of work
- Facilitators each used two days to lead delegations to provide positions on each of the four main elements plus cross-cutting issues
- On last day, each facilitator provided an oral summary of the results of the work during each informal working session
- President’s report on the second session
  - advance and unedited version in English only now posted, with the facilitators reports appended
  - will be made available in all 6 UN languages
Third Substantive Session

- To be held last two weeks of August 2019
- To be first text-based negotiations
- Based on zero draft to be provided by President before 25 July 2019
- Methodology of work to be outlined before IGC-3
- Anticipate some “informal-informals” for delegations only in smaller rooms
- Promised no more than two groups meeting at same time
UNASKED QUESTIONS
Diplomatic Conference

- What is the meaning/scope of these terms used in UN General Assembly in A/RES/72/249, December 2017, that convened an
  - intergovernmental conference
  - on an **internationally legally binding instrument**
  - **under** the UN Convention on the Law of the Sea
  - on the **conservation and sustainable use**
  - of **marine biological diversity**
  - of **areas beyond national jurisdiction** (ABNJ)
ABNJ

- Waters of EEZ and above CS are national waters
- Unresolved question: What if claimed outer limit of ECS is not resolved at time project is proposed?
  - 60 (of 83) submissions to CLCS not “adopted” as of 12 April 2019
  - 47 preliminary informations to CLCS as of December 2017
Consensus

- No agreed UN definition of “consensus”
- Will it be defined in BBNJ?
  - Absence of formal objection to specific articles
  - Absence of formal objection to package deal – to adoption of whole text
  - Widespread consensus to ratify package deal
- Consensus will be hard to achieve, but essential
- Not achieved at PrepCom
- Russia and USA expressed their concerns on adoption of the DipCon resolution at failure at PrepCom to achieve consensus
- Negotiations at UNCLOS III (168 parties) vs. Fish Stocks (90 parties)
Thank you for your attention

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