

# Legal Issues in the Protection of Marine Biological Diversity Beyond National Jurisdiction

Sunil Kr. Agarwal\*

*States are facing new challenges with respect to conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction (BBNJ). This underscores a significant gap in the existing legal regime, as embodied in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), for protection of marine biological diversity beyond national jurisdiction. Thus, there is a critical need for a legal instrument to specifically address the regulatory and governance gap in this area. To this end, the United Nations General Assembly (UNGA) has set up an ad-hoc BBNJ Working Group. In January 2015, the BBNJ Working Group recommended that an international legally binding instrument under UNCLOS needed to be developed. This will enable UNGA to decide in its forthcoming 69<sup>th</sup> Session, in 2015, whether or not to launch negotiations for a new Implementing Agreement under the UNCLOS on the conservation and sustainable use of the marine biological diversity in areas beyond national jurisdiction. The details and contours of the new legal instrument, however, have yet to be agreed to, by the international community. It is suggested that international community may consider the*

---

\*Dr. Sunil Kumar Agarwal is an associate member of the National Maritime Foundation. He is an international lawyer and expert on the law of the sea. He can be reached at [agarwalnet@gmail.com](mailto:agarwalnet@gmail.com)

*precedent of the United Nations Fish Stock Agreement (UNFSA) for taking the next steps in devising a legal instrument. Further, there is also a need to consider an institutional arrangement to address existing BBNJ governance gaps.*

## **Introduction**

The Earth's biological resources are vital to economic and social development. Biological resources are an asset having great potential for yielding sustainable benefits.<sup>1</sup> Marine ecosystems and biodiversity have critical functions in the natural cycle and in supporting life on Earth. Among many ecosystem services, they produce a third of the oxygen that we breathe, offer a valuable source of protein and have a role in the global climate cycle. In recent time, many of these marine ecosystems have become degraded. The loss of the world's biological diversity, in particular marine biodiversity, has continued, mainly as a result of habitat destruction, overharvesting, overfishing, pollution and invasive alien species.<sup>2</sup> There is growing evidence of the degradation of marine ecosystems and their biodiversity, including beyond areas of national jurisdiction.<sup>3</sup> According to 2005 Millennium Ecosystem Assessment, oceans and coasts are among the most threatened ecosystems of the world.<sup>4</sup>

The Convention on Biological Diversity (CBD)<sup>5</sup> is the principal instrument of international law concerned with the conservation and sustainable use of biodiversity. It recognises that States have sovereign rights over their natural resources, including biological resources,<sup>6</sup> and thus the necessary legal powers to adopt laws and policies on the conservation and sustainable use in land and marine areas under their jurisdiction, for example through the creation of protected areas, and to ensure the sustainable use of the components of those resources.<sup>7</sup> However, the scope of the CBD does not cover the conservation and sustainable use of marine biodiversity beyond national jurisdiction.<sup>8</sup> Parties to the CBD are required to implement that Convention with respect to the marine environment consistently with the rights and obligations of States under the law of the sea.<sup>9</sup>

As far as marine biological diversity is concerned, the implementation of the CBD has to be done within the framework set by the 1982 United Nations Convention on the Law of the Sea (UNCLOS).<sup>10</sup> CBD and UNCLOS are complementary instruments with respect to the conservation and sustainable use of marine biodiversity beyond the national boundary.<sup>11</sup> There is increasing concern within the international community that the existing framework under UNCLOS, based around

the doctrine of the freedom of the high seas, is no longer adequate insofar as the conservation and sustainable use of biodiversity in areas beyond national jurisdiction is concerned. There is thus a need to address the gap in the governance of marine biological diversity in areas beyond national jurisdiction (BBNJ), namely the high seas and the deep-sea bed of the world's oceans.

This paper provides an overview of marine biological diversity. It then reviews the existing legal regime of UNCLOS in the context of marine biodiversity, and efforts towards addressing gaps in the legal regime for the protection of marine biological diversity beyond areas of national jurisdiction.

## **Marine Diversity in Areas Beyond National Jurisdiction**

The international community has become increasingly aware of the range of services provided by marine ecosystems, and of the rich biodiversity of pelagic (open-water) and benthic ecosystems in the high seas. Areas beyond national jurisdiction contain sensitive and biodiversity-rich ecosystems such as seamounts, cold-water corals and hydrothermal vents.<sup>12</sup> Other ecosystems include continental slopes and abyssal plains, trenches, canyons, sponge reefs and fields, and cold seeps. In addition, the pelagic realm provides an important habitat for many species. These ecosystems are also vulnerable and fragile and are threatened by human activities such as fishing, deep-sea mining and climate change. A brief account of the present threats to the marine biodiversity is as follows:

### *Seamounts*

Seamounts are highly productive ecosystems known for their ability to support large biodiversity and special biological communities, including cold-water coral reefs as well as abundant fisheries resources, marine mammals and seabirds. Seamount ecosystems are also characterised by abundant fisheries resources. The biggest threat to seamounts comes from increased fishing activities. Seamount trawl fisheries also have severe impacts on fragile habitats such as cold-water corals and other invertebrates. Other threats include climate change, bioprospecting and deep seabed mining of ferromanganese crusts.

### *Cold-water corals*

Deep-sea coral ecosystems are ecologically important. Coral species have potential as pharmaceuticals, nutritional supplements, enzymes, pesticides, cosmetics and other commercial products. Major threats to cold-water corals include bottom trawling, hydrocarbon drilling, seabed mining, ocean acidification and direct exploitation. Mining activities increase the risk of causing local extinctions of endemic species of cold-water corals. Bioprospecting activities also pose serious threats to cold-water coral reefs and their associated species.

### *Hydrothermal vents*

Hydrothermal vents are unique ecosystems on Earth which are independent from the sun as an original source of energy, relying instead on chemosynthesis. Hydrothermal vent organisms possess novel biochemical and physiological features which enable them to survive in extreme environmental conditions. The major threat to hydrothermal vents is from marine scientific research and bioprospecting. Mining of polymetallic sulphide deposits also presents a potential threat to the associated hydrothermal vent ecosystems.

### *Other ecosystems*

Ecosystems associated with abyssal plains, deep-sea trenches, canyons, sponge reefs and fields, and cold seeps are ecologically important. They are also threatened by marine pollution, bottom trawling activities, bioprospecting and climate change.

## **United Nations Convention on the Law of the Sea and Marine Biodiversity**

### *Maritime Zones*

The 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.

UNCLOS divides ocean space into a number of maritime zones, both within and beyond the limits of national jurisdiction.<sup>13</sup> The only ocean spaces where coastal States have full sovereignty are internal waters and the territorial sea. The rights of

coastal States in the exclusive economic zone and of the continental shelf are far more limited than in the territorial sea. These zones do not belong to the coastal State but the coastal State has sovereign rights for the exploration, exploitation, conservation and management of these zones' natural resources, both living and non-living.<sup>14</sup> In exercising their rights, coastal States must, however, have due regard for the rights and duties of other States. These include the freedom of navigation, the freedom to lay submarine cables and pipelines, and other internationally lawful freedoms of the sea.<sup>15</sup>

### *Areas beyond national jurisdiction*

UNCLOS provides that the areas beyond the limits of national jurisdiction include: the water column beyond the EEZ, or beyond the territorial sea where no EEZ has been declared, called the "high seas,"<sup>16</sup> and the seabed beyond the limits of the continental shelf,<sup>17</sup> designated as "the Area."<sup>18</sup> Parts VII and XI of the Convention provide the legal framework for the high seas and the Area, respectively.

The Area and its resources are the "common heritage of mankind" and no State may claim or exercise sovereignty or sovereign rights over any part of the Area or its resources. The freedom of the high seas must be exercised with due regard for rights under the Convention with respect to activities in the Area. It is the responsibility of the International Seabed Authority (ISA) to adopt the necessary measures to protect and conserve the natural resources of the Area, and to prevent damage to the flora and fauna of the marine environment.

### *Marine environment and biodiversity under UNCLOS*

#### 1. Protection of the marine environment

UNCLOS places special emphasis on the critical importance of protecting and preserving the marine environment. It provides the legal framework<sup>19</sup> to take measures to protect and preserve rare or fragile ecosystems.<sup>20</sup> Article 194(1) imposes a duty on States, individually or jointly as appropriate, to take all measures consistent with UNCLOS that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and to endeavour to harmonise their policies in this connection. Moreover, measures taken under Part XII must include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine

life. In other words, although the term “biodiversity” is not used in the UNCLOS, it does apply to marine living resources and makes reference to rare or fragile ecosystems, habitats, species and other forms of marine life that encompass biodiversity.

Under UNCLOS, the rules applicable to the protection of the marine environment differ depending on:

1. The location in the water column or on the seabed/in the sub-soil;
2. The maritime zone it is located in;
3. The nature of the sea use which adversely affects it.

This is because, firstly, UNCLOS divides the seas into different maritime zones which extend seaward from the coast and where coastal States and other States have different rights and obligations. Secondly, UNCLOS also establishes rules for different legitimate uses of the sea: fisheries, shipping, marine scientific research, etc.

UNCLOS provides both that States are responsible for fulfilling their international obligations concerning this matter and that they bear liability for the consequences of any breach of such obligations. Furthermore, States are obliged to assess and monitor the potential effects of activities under national jurisdiction.<sup>21</sup> This requires all States to take such measures as may be necessary to conserve high-seas living resources. Moreover, it obliges States to cooperate with each other and through appropriate global and regional organisations for marine environmental protection.

Marine scientific research (MSR) conducted in the water column of an EEZ or in the seabed or subsoil of a continental shelf is subject to a more nuanced set of rules. While consent has to be sought from the coastal State, the latter has no discretion to deny access provided that the MSR is for peaceful purposes and is designed to increase scientific knowledge of the marine environment for the benefit of humankind. Genuine field research on marine organisms or ecosystems which would perform the CBD obligation of inventory and monitoring of marine biodiversity would qualify as such MSR over which the coastal State has no discretionary power to withhold consent.

## 2. Marine biological diversity beyond national jurisdiction (BBNJ)

With respect to marine biological diversity, the commonality between the “Area” and the high seas is that they are located beyond national jurisdiction and, as such, fall

outside the scope of the 1992 CBD, especially with respect to the obligation to monitor and create marine protected areas. While UNCLOS is the existing legal regime for protection of marine biodiversity beyond national jurisdiction, neither Part XI dealing with “the Area” (deep seabed part) nor Part XII on “Protection and Preservation of the Marine Environment” includes any detailed rules for protection of the environment and marine biological diversity.

Bioprospecting is not restricted in the high seas or in the Area, except for the general obligations to protect the marine environment provided for in UNCLOS, including rare or fragile ecosystems as well as the habitat of depleted and threatened species and other forms of marine life. MSR beyond national jurisdiction (i.e. in the High Seas and the Area) is one of the freedoms of the high seas and thus it does not require any permission from the coastal state. Deep seabed mining has the potential to cause localised damage, including crushing living organisms, removal of substrate habitat and disturbance of sediment. However, Part XI of the UNCLOS relating to “the Area,” and Part XII’s regime relating to protection of the marine environment, do not provide a regulatory regime for protection of the environment in connection with deep seabed mining. The consequences of this environmental damage may be significant and detrimental to the efforts aimed at the conservation and protection of marine biological diversity.

### *Governance gaps relating to BBNJ*

It is thus apparent that important gaps still exist in the regulation of conservation and sustainable use of biodiversity in areas beyond national jurisdiction, which can be summarised as follows:

1. Lack of comprehensiveness: The exercise of a number of existing high-seas activities, such as MSR, bioprospecting, cable and pipeline laying, or the construction of artificial installations, lacks specific international rules governing their operation or their potential impacts on marine biodiversity. There is also no mechanism yet in place to guide the development and regulate the implementation of potential and emerging activities in areas beyond national jurisdiction (ABNJ), such as deep seabed mining, climate engineering, marine tourism, offshore mariculture or installations for energy production.

2. Bioprospecting and benefit sharing: As regards areas beyond national jurisdiction, namely the Area and the high seas, the question of access to marine genetic resources or benefit-sharing is not at present effectively addressed under UNCLOS. UNCLOS does not mention marine genetic resources at all.<sup>22</sup> On the other hand, the CBD does not directly apply to genetic resources in areas beyond national jurisdiction.

In the absence of an agreed definition of the term “bioprospecting” under international law, the acquisition of genetic material from areas beyond national jurisdiction is generally considered to fall under the heading of marine scientific research.<sup>23</sup> However, the UNCLOS is silent as to the marine genetic resources of the Area, wherein the deep seabed mining regime under Part XI applies to the exploitation of the mineral resources situated there. The issue of benefit-sharing simply does not arise at all as MSR is one of the high-seas freedoms, subject to Part XI of UNCLOS, in areas beyond national jurisdiction.<sup>24</sup>

3. Lack of global institutions: UNCLOS sets out the general obligation to protect the marine environment in the maritime domain. However, these obligations have not yet been implemented in areas beyond national jurisdiction (ABNJ), as there are no global institutions for implementing these provisions. There is thus a need to fill governance gaps that have emerged with increasing anthropogenic activities in ABNJ, including fishing, bioprospecting and deep seabed mining.

## **BBNJ Working Group: Addressing the Legal Lacuna**

### *UNGA initiative on BBNJ*

Efforts are being made towards a strengthened legal framework for marine biodiversity in areas beyond national jurisdiction (ABNJ). At the World Summit On Sustainable Development, in recognition of that key role in sustaining life on Earth, States committed themselves to maintaining the productivity and biodiversity of important and vulnerable marine and coastal areas, including in areas beyond national jurisdiction.<sup>25</sup>

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,” commonly

known as the “BBNJ Working Group.” In particular, the Working Group was requested to:<sup>26</sup>

1. Survey the past and present activities of the United Nations (UN) and other relevant international organisations with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;
2. Examine the scientific, technical, economic, legal, environmental, socio-economic and other aspects of these issues;
3. Identify key issues and questions where more detailed background studies would facilitate the consideration by States of these issues; and
4. 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.

The mandate of the BBNJ Working Group provides an opportunity to the international community to consider all the issues relating to marine biological diversity beyond areas of national jurisdiction in an integrated, cross-cutting and cross-sectoral manner.

### *Rio+20 Outcome Document on BBNJ*

During the 2012 United Nations Conference on Sustainable Development (the Rio+20 Summit), there were expectations that international community would reach a political agreement to recommend the launch of negotiations under the United Nations General Assembly (UNGA) of an international agreement on the subject. However, no consensus was reached. Nevertheless, States committed themselves to address, on an urgent basis, building on the work of the BBNJ Working Group on the issue of the conservation and sustainable use of the marine biological diversity of ABNJ.<sup>27</sup> It was also agreed at the Rio+20 Summit that States would decide by the end of the 69th session of the UNGA (August 2015) whether or not to launch the negotiations for the conclusion of an UNCLOS international agreement.<sup>28</sup>

This commitment was recalled and reaffirmed by UNGA in its 67th and 68th sessions.<sup>29</sup> In its resolution 68/70, the UNGA also requested the BBNJ to make recommendations to the UNGA “on the scope, parameters and feasibility of an international instrument under the Convention”.<sup>30</sup> It also reaffirmed the need for

States to urgently consider ways to integrate and improve – based on the best available scientific information and the precautionary approach, and in accordance with the UNCLOS – the management of risks to the marine biodiversity of seamounts, cold-water corals, hydrothermal vents and other underwater features.<sup>31</sup>

## **Way Forward**

In accordance with the mandate of the Rio+20 outcome document, the BBNJ Working Group is traversing a “new journey” to ensure an effective legal framework for the protection of marine BBNJ. Rio+20 identified August 2015 as the deadline for discussions on BBNJ. In resolution 68/70, the UN General Assembly requested the UN Secretary-General to convene three meetings of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity in ABNJ.<sup>32</sup>

The discussions in the BBNJ Working Group meetings contributed to developing significant understanding that any new international instrument for protection of marine BBNJ should be negotiated within the overall framework of the UNCLOS as a new implementing agreement. The discussions within the BBNJ Working Group have also brought out clearly that two existing implementing agreements to the UNCLOS, namely the agreement relating to the implementation of Part XI of the Convention and the United Nations Fish Stocks Agreement (UNFSA),<sup>33</sup> are examples of the dynamic character of the UNCLOS. The UNCLOS framework needs to be suitably utilised for identifying and responding to new challenges for protection of marine BBNJ. There is still no clarity about the scope *ratione loci* (geographic scope) of the new international instrument for protecting marine BBNJ. Several experts are of the view that it should cover both the Area and the high seas. While some experts are of the view that the principle of “common heritage of mankind” is applicable to marine genetic resources in ABNJ, other experts feel that the freedom of the high seas applies to those resources instead. The role of capacity-building and transfer of technology in strengthening cooperation and coordination has also been underscored.<sup>34</sup>

The BBNJ Working Group met twice in 2014. These meetings in 2014 made progress towards developing consensus on general issues. However, a significant divergence of views remained on contours of the possible legal regime for BBNJ. This has prevented the emergence of any concrete proposal for negotiation for addressing legal and regulatory gaps in the management of BBNJ. Nevertheless, these meetings

led to an emerging consensus that if an international legal instrument is to be adopted, this will be within the framework of UNCLOS, and not within the CBD.<sup>35</sup>

In the recent meeting in January 2015, BBNJ Working Group came out with an outcome document and recommendation to develop an international legally binding instrument under the UNCLOS on the conservation and sustainable use of the marine biological diversity of areas beyond national jurisdiction (ABNJ).<sup>36</sup> This will enable the 69th session of the UNGA to decide on holding an intergovernmental conference for starting negotiations on a new international agreement on protection of biological diversity beyond areas of national jurisdiction (BBNJ). There is, however, no consensus on the content and the principles of the ensuing legal instrument under the UNCLOS for the protection of marine BBNJ. The evolution of a consensus on the contentious issues will determine the contours of the international legal instrument for the protection of marine biodiversity beyond national jurisdiction.

## Conclusion

Ocean space beyond national jurisdiction supports biological communities that present unique genetic characteristics. However, marine biodiversity beyond national jurisdiction is increasingly threatened in the light of intensified shipping, growing marine pollution and deep seabed mining activities. The existing international framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction is fragmented. This has resulted in a gap in international ocean governance to protect biodiversity and ecosystems beyond national jurisdiction. It is apparent that the existing legal regime of the 1982 UNCLOS is inadequate to address all aspects of marine biological diversity beyond areas of national jurisdiction (BBNJ).

In this context, the UN initiated an ad hoc BBNJ Working Group process for the conservation and sustainable use of marine biological diversity beyond national jurisdiction. The Rio+20 Summit outcome mandated the BBNJ Group to bring out a recommendation by the end of the 69th session of the UN General Assembly (August 2015) on whether or not to launch the negotiations for the conclusion of an international agreement under the UNCLOS on the subject. In January 2015, it came out with an outcome document and a recommendation to develop an international legally binding instrument under the UNCLOS.

However, consensus on the contours of an international agreement under the UNCLOS has yet to be reached. It is suggested that the UN Preparatory Committee which is preparing elements of the draft text of BBNJ Implementation Agreement needs to consider the United Nations Fish Stock Agreement (UNFSA) for moving forward to protect marine biodiversity in areas beyond national jurisdiction. The new Implementation Agreement needs to fill the existing regulatory and governance gaps in BBNJ and promote precautionary, ecosystem-based measures to ensure the long-term sustainability of marine species and ecosystems in ABNJ. There is also a need to provide for institutional arrangements to address the existing governance mechanisms in the BBNJ.

## Notes

1. Paragraph 15.3 of Agenda 21, <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf> (accessed February 20, 2015).
2. In 2006, the Convention on Biological Diversity (CBD) Conference of the Parties discussed the conservation and sustainable use of deep seabed genetic resources beyond the limits of national jurisdiction (decision VIII/21). Also at that meeting, in decision VIII/24 on protected areas, the Conference of the Parties expressed its deep concern over the range of threats to marine ecosystems and biodiversity beyond national jurisdiction, and recognised the marine protected areas.
3. A/60/63/Add.1, para. 9.
4. Millennium Ecosystem Assessment (2005), *Ecosystems and Human Well-Being: Synthesis* (Island Press, Washington, DC).
5. Convention on Biological Diversity, Rio de Janeiro, June 5, 1992, 1760 UNTS 79.
6. The CBD embraces a holistic view of biological diversity which is defined as the variability among living organisms from all sources, including, among other things, terrestrial, marine and other aquatic ecosystems and the complex ecological systems of which they are part: this includes diversity within species, between species and of ecosystems. This definition thus includes species diversity, genetic diversity (also called genetic resources) and ecosystem diversity. However, the protection mechanisms envisaged in the CBD are based on a terrestrial understanding of biodiversity and are ill-suited for marine biodiversity.
7. The CBD is a comprehensive, binding agreement covering the use and conservation of biodiversity. It requires countries to develop and implement strategies for sustainable use and protection of biodiversity, and provides a forum for continuing international dialogue on

biodiversity-related issues through the annual conferences of the parties (COPs). The 1992 CBD document contained no specific article on marine and coastal biodiversity. Instead the 1995 Conference of the Parties dealt with these issues in two decisions . One was a policy decision – now known as the Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity – containing basic principles and thematic areas. These provisions were to be implemented through a multi-year programme of work.

8. Its jurisdictional scope with regard to the “elements of biological diversity” is limited to the land and marine areas under the national jurisdiction of States. The jurisdictional scope of the CBD is specified in its Article 4. However, this does not mean that the CBD is entirely irrelevant to areas beyond national jurisdiction because States must apply the general principles of the CBD to processes and activities carried out under their jurisdiction or control. In practice, this would include taking measures to control the actions of both their nationals and ships flying their flag.
9. Article 22, Convention on Biological Diversity.
10. United Nations Convention on the Law of the Sea, Montego Bay, December 10, 1982, 1833 United Nations Treaty Series (UNTS) 3.
11. The CBD builds on the Law of the Sea Convention by extending protection to biodiversity located within the 12-mile limit zones areas not directly protected under the UNCLOS provisions. See, A Boyle (2000): *The Rio Convention on Biological Diversity, in International marine environmental law: Institutions, implementation and innovations*, Kluwer Law International.
12. The oceans are characterised by a high diversity of life, ecosystems and physical features, ranging from shallow, near-shore ecosystems and species to the deepest and most remote features such as trenches and abyssal plains, both within and beyond areas of national jurisdiction.
13. A number of institutions are created under UNCLOS for its implementation. These include the International Tribunal for the Law of the Sea, the Commission on the Limits of the Continental Shelf and the International Seabed Authority.
14. UNCLOS article 56(1)(a).
15. UNCLOS, article 58(1).
16. Article 86, UNCLOS.
17. Established in conformity with article 76 of the UNCLOS.
18. Article 1 para. 1, UNCLOS.
19. Article 192, UNCLOS.
20. Article 194.5, UNCLOS.

21. Articles 204–206, UNCLOS.
22. Perhaps at the time of adoption of UNCLOS, very little was known about marine organisms in the deep seabed.
23. In the case of marine scientific research, this may be undertaken subject to the provisions of UNCLOS relating to the conservation and management of living resources (Part VII, section 2) and the general obligations to protect and preserve the marine environment (Part XII), as well as the specific regime for marine scientific research (Part XIII).
24. Article 257 clearly provides that all States, irrespective of geographical location, have the right to conduct scientific research “in the water column beyond the limits of the exclusive economic zone.” However, the UNCLOS is silent as to the marine genetic resources of the Area, wherein a specific regime under chapter XI applies to the exploitation of the mineral resources situated there. Article 256 expressly indicates that all States have the right, in conformity with Part XI, to conduct scientific research in the Area.
25. Johannesburg Plan of Implementation, para. 32 (a).
26. The BBNJ Working Group was established pursuant to UNGA Resolution 59/24 of November 17, 2004, paragraph 73.
27. Paragraph 162 of the Rio+20 outcome document *The Future We Want*, A/RES/66/288, 11 September 2012, <http://www.uncsd2012.org/thefuturewewant.html> (accessed May 5, 2015).
28. UNGA resolution 67/78. “Oceans and the law of the sea,” UN doc. A/RES/67/78, of December 11, 2012. Paragraph 181. UNGA resolution 68/70. “Oceans and the law of the sea,” UN doc. A/RES/68/70, of December 9, 2013, Paragraph 197.
29. UNGA resolution 67/78. “Oceans and the law of the sea,” UN doc. A/RES/67/78, of December 11, 2012. Paragraph 181. UNGA resolution 68/70. “Oceans and the law of the sea,” UN doc. A/RES/68/70, of December 9, 2013. Paragraph 197.
30. See UNGA 68/70, para. 198–199.
31. *Ibid.*, para 206.
32. UNGA resolution 68/70, paragraph 200. The first of these meetings of the Working Group was held at United Nations Headquarters from April 1–4, 2014; the second meeting was held at United Nations Headquarters from June 16 to 19, 2014. The third meeting will be held from January 20 to 23, 2015.
33. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the UN Fish Stocks Agreement).

34. Co-Chairs' summary of discussions at 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; see UNGA A/69/177, July 23, 2014.
35. Although Venezuela, which is not a party to UNCLOS, has strongly advocated the CBD option.
36. Outcome of the Ad Hoc Open-ended Informal Working Group to Study Issues Relating to the Conservation and Sustainable Use of Marine Biological Diversity Beyond National Jurisdiction, January 20–23, 2015, [http://www.un.org/depts/los/biodiversityworkinggroup/documents/ahwg-9\\_report.pdf](http://www.un.org/depts/los/biodiversityworkinggroup/documents/ahwg-9_report.pdf) (accessed February 9, 2015).