



“CARICOM AND BBNJ”

INTERNATIONAL SEABED AUTHORITY 25TH ANNIVERSARY CONFERENCE

KINGSTON, JAMAICA, 14TH -16TH NOVEMBER, 2019

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THE BACKGROUND TO THE BBNJ –

TEXT 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

- ▶ Ad Hoc Open-ended Informal Working Group created by UNGA resolution 59/24 of November 2004
 - Last Co-Chairs were from The Netherlands & Sri Lanka
 - Met over 9 sessions between 2006 and 2015
 - Prepared a report in keeping with mandate to make recommendations on the scope, parameters and feasibility of an international instrument under the Convention (UNCLOS)

- ▶ Preparatory Committee established by UNGA resolution 69/292 of July 2015
 - Initially chaired by Ambassador Eden Charles (Trinidad & Tobago) & then by Ambassador Carlos Duarte (Brazil)
 - Met over 4 sessions (2 each in 2016 & 2017)
 - Worked on the basis of the 2011 package (see subsequent slide)
 - Generated a Report with recommended elements with a view to developing a draft text

- ▶ Intergovernmental Conference (IGC) mandated by UNGA resolution 72/249 of December 2017
 - Will meet over 4 sessions (1 in 2018, 2 in 2019 & 1 in 2020)
 - Presided over by Ambassador Rena Lee, Singapore
 - 4 Facilitators (Belize, The Netherlands, New Zealand & Palau)
 - Informal Working Groups & Informal Informal consultations

- ▶ Strong Civil Society Engagement



ELEMENTS OF THE 2011 PACKAGE

- ❑ Four key elements
 - ✓ Marine genetic resources (MGRs), including questions on the sharing of the benefits
 - ✓ Measures such as area-based management tools (ABMTs), including marine protected areas
 - ✓ Environmental impact assessments (EIAs)
 - ✓ Capacity-building and the transfer of marine technology (CBTMT)

- ❑ Cross-cutting issues
 - ✓ Funding
 - ✓ Preamble
 - ✓ General Provisions
 - ✓ Institutional Arrangements
 - ✓ Final Clauses
 - ✓ Dispute Settlement

OTHER ADMINISTRATIVE DETAILS

- Secretariat services provided by the UN Division for Ocean Affairs & the Law of the Sea of the Office of Legal Affairs of the Secretariat
- There are 15 Vice-Presidents from Algeria, The Bahamas, Belgium, Brazil, Bulgaria, Canada, China, Japan, Mauritius, Mexico, Micronesia, Morocco, Poland, Russian Federation and USA
- The Under-Secretary-General for Legal Affairs & UN Legal Counsel, Mr. Miguel de Serpa Soares is the Secretary-General of the Conference
- The Conference is open to all States Members of the UN, members of the specialized agencies and parties to the Convention
- Representatives of organisations and other entities that have a standing invitation from the General Assembly can participate as observers
- Representatives of interested global and regional intergovernmental organisations and other interested bodies that were invited to participate in relevant conferences and summits can participate as observers
- Relevant non-governmental organisations in consultative status with the UN ECOSOC as well as those accredited to relevant conferences and summits can attend as observers
- Associate members of regional commissions can participate as observers



CARICOM's GENERAL APPROACH

- ▶ Engagement with cross-regional groups (Leatherback; mixed group of developing & developed country partners)
- ▶ Engagement within the AOSIS, G77
- ▶ Engagement with the President
- ▶ Partnering with Civil Society
- ▶ Focus on elements of the package
- ▶ Regional Engagement
 - ❖ 3 regional meetings to date
 - ❖ Focal points on different clusters
 - ❖ Video/Teleconferencing prior to IGC sessions
 - ❖ Stakeholder Engagement
 - ❖ Use of coordinators for different elements – burden sharing

CARICOM's GENERAL APPROACH (cont'd)

- Support the urgent need for conservation and sustainable use of marine biological diversity of the Ocean
- Support the need for coherence and the establishment of minimum global standards
- Address legal gaps that exist with respect to the provisions for the marine resources of the High Seas
- Ensure that the region can benefit from the creation of this new regime, especially as SIDS dependent on marine resources
- Identify opportunities for effective capacity-building to respond to deficiencies that exist at the national and regional levels
- Build, as far as possible, on existing arrangements to enhance collaboration and complementarity among existing measures

CARICOM & AREA-BASED MANAGEMENT TOOLS (ABMTs)

- ❖ The Treaty must not be confined to the treatment of MPAs
- ❖ Marine Spatial Planning should be reflected
- ❖ The text should allow for the outline of the overall process – not a detailed step-by-step description of all the steps involved in creating an ABMT
- ❖ Objectives should correspond to overall anticipated outcome
- ❖ Definitions could be contemplated in keeping with the foregoing i.e. not limited to MPAs
- ❖ There should be a role for a global body (COP) to adopt or recommend measures as well as a Scientific & Technical Body
- ❖ Any designation and establishment of an ABMT under the Treaty should be informed by the best available science, traditional knowledge, the precautionary principle & the ecosystem approach
- ❖ Measures under this Part should promote coherence and complementarity, including of those adopted by relevant legal instruments and frameworks and relevant global, regional, sub-regional and sectoral bodies
- ❖ Consultations should be inclusive, transparent & open to all stakeholders; facilitated by a Secretariat

CARICOM & EIAs

- Global minimum standards to be established
- Should employ an impacts & effects based approach
- Should take into account cumulative impacts & transboundary impacts
- Should take into account social, economic & cultural impacts
- An article on environmental assessments (SEA) should be included and the Scientific & Technical Body (STB) should develop further guidelines on their conduct
- The threshold & criteria for EIAs should be “significant adverse impact”
- The STB can further clarify the threshold & develop criteria for the conduct of EIAs
- There should be an article to treat with areas identified as ecologically or biologically significant or vulnerable
- CARICOM supports an indicative, non-exhaustive list of activities that does not require an EIA or SEA; list to be prepared by the COP as voluntary guidelines on the recommendation of the STB; list to be periodically updated by the COP
- State Party is responsible for ensuring screening is adequately carried out to determine if a planned activity requires an EIA; if the State decides through screening that a comprehensive EIA isn't required, this is subject to oversight by the STB
- Public notification & consultation critical



CARICOM & CAPACITY-BUILDING AND THE TRANSFER OF MARINE TECHNOLOGY (CBTMT)

- ▶ Key point for CARICOM
- ▶ Mixed approaches: monetary & non-monetary; mandatory & voluntary
- ▶ Role for a clearing house mechanism
- ▶ Needs-based assessments & determinants; ownership
- ▶ CARICOM supports an indicative, non-exhaustive & flexible list of types of CBTMT, which would be further developed by the COP and periodically reviewed & adjusted by it
- ▶ Scope for a CBTMT Committee

CARICOM & MARINE GENETIC RESOURCES (MGRs)

- ❑ Importance of defining access & utilization; access should go beyond collection
 - ❑ Must be geared towards the fair and equitable sharing of benefits
 - ❑ Treaty should apply to MGRs of, accessed in and originating from BBNJ
 - ❑ CARICOM supports access to MGRs collected *in situ*, *ex situ* and as digital sequence data & information
 - ❑ Supports text on the temporal scope that would allow access to samples collected before entry into force but utilized after entry into force of the Agreement
- Benefits should include both monetary & non-monetary benefits
 - Monetary benefits shall be shared against an embargo period upon the commercialization of products that are based on MGRs in the BBNJ, in the form of milestone payments determined by the COP
 - Non-monetary benefits includes access to samples and sample collections, sharing of information *viz* pre-and-post-cruise notifications; use of open-access, including through a clearing-house mechanism
 - Should be scope to reference IPRs
 - Utilisation of MGRs of BBNJ to be carried out through the STB, in collaboration with the CHM, inclusive of an obligatory prior electronic notification system managed by the Secretariat and any mandated international institutions

CARICOM & CROSS-CUTTING ISSUES

- Special circumstances of SIDS
- Funding critical – new, innovative & existing sources
- Capacity-building - imperative
- Institutional arrangements for global oversight (see subsequent slides)
- General Principles & Approaches critical
- General Provisions (Use of Terms) – key to setting the parameters
- Implementation and Compliance – necessary for the effectiveness of the Agreement
- Final Clauses – small number of states for entry into force; open to signature, accession & ratification by a range of entities; provisional application; prohibit reservations & exceptions; preserve existing arrangements
- Review – COP to undertake the first review at a set time after entry into force
- Dispute Settlement – mixed approaches recalling need to avoid burdensome obligations for SIDS; Advisory Opinions necessary
- Objective – recall balance between conservation & sustainable use
- Relationship (*not undermining*) – important for coherence; must not result in the retention of the *status quo*
- Level of Detail required for the Treaty *versus* what can be left to a later stage (need to future proof as well as ensure that the Agreement is operational)
- Liability – important – States Parties should be liable in accordance with international law for damage or loss attributable to them

CARICOM & BBNJ INSTITUTIONAL ARRANGEMENTS

- ✓ There should be a **Conference of Parties (COP)** with scope to establish subsidiary bodies
- ✓ The **COP** should take decisions related to the establishment of ABMTs and receive reports on the implementation of measures adopted or recommended
- ✓ The **COP** would be responsible for determining whether a planned activity may proceed
- ✓ There should be a **Secretariat** from among existing competent international organisations to, *inter alia*, facilitate consultations for EIAs and ABMTs; transmit proposals received & provide administrative support to the COP
- ✓ There should be a **Scientific and Technical Body** to provide advice to the COP across all the elements of the package
- ✓ There should be a **Clearing House-Mechanism** managed by an existing arrangement to enable States Parties to have access to collect, evaluate, make public and disseminate information; should cut across all the elements of the package

OTHER FACTORS

- ✓ General, broad similarities amongst developing countries; divergence spins on details, especially in the G77
- ✓ Common agreement amongst all parties on the importance of capacity-building
- ✓ Differences of opinion over mandatory & voluntary requirements in the proposed instrument, primarily between developed & developing countries
- ✓ Greatest level of divergence on MGRs
- ✓ Particular preferences exist for specific elements of the package
- ✓ Divergence on general principles and approaches

CONCLUSION & NEXT STEPS

- IGC 4 – continued respect for the timeline to end in March/April 2020
- Intersessional Work – Outreach to different delegations
- Stakeholder consultations – efforts to coordinate at the regional level
- Agreement at any cost?
- Decision-making: how much premium should be placed on consensus?
(op19 of 72/249: “....decisions of the conference on substantive matters shall be taken by a 2/3 majority of the representatives present and voting, before which, the presiding officer shall inform the conference that every effort to reach agreement by consensus has been exhausted”)
- Trust Fund support for the participation of experts from developing countries

