

**BBNJ IGC 4, Agenda item 6. Informal informals on Cross cutting issues – Dispute Resolution and Settlement, 14 March 2022, WWF International STATEMENT**

Distinguished delegates,

WWF wishes to share a few thoughts and suggestions we hope will be useful for delegates on this topic.

WWF is very supportive of including dispute settlement arrangements in the BBNJ ILBI. **Additionally, it is equally important that arrangements intended to prevent disputes being initiated in the first place should be appropriately included throughout all relevant Parts of the ILBI.**

This goes to the heart of what is meant by ‘enhanced cooperation’. Cooperation is unremarkably easy when States agree with each other. Successfully facilitating the amicable and non-judgemental handling of conflicts, differences and disagreements between States, however, is the mark of a good cooperation arrangement.

WWF would also like to suggest that States establish a Compliance Committee in the ILBI with a mandate focused on providing advice and assistance to States to support them in complying with the provisions of the ILBI and implementing decisions of the COP. In evaluating States’ implementation and compliance reports, the Committee would focus on recommending ways forward, including by securing interpretation of legal texts (including from ITLOS) and by helping develop implementation action plans based on State-specific needs assessment reports.

Overall, WWF is keen to see enhanced cooperation as an approach which can foster amicable discussions among States on potentially conflictive issues, especially as they seek to understand why customary approaches to cooperation have failed to secure conservation and sustainability outcomes for marine biodiversity. Should States feel obliged to turn to dispute settlement, WWF would like to see the BBNJ ILBI encourage States to start off with ‘early-stage’ approaches. Such approaches need not be exclusive or serial, as different approaches to preventing a dispute can be pursued at the same time.

**Ready access to these ‘cheap and easy’ options should help maintain the political will necessary to deliver better outcomes.** A key reason why WWF is keen to see explicit reference to such cheap and easy, early-stage dispute settlement options in the BBNJ ILBI text is so that they can be securely linked to the capacity building provisions of the ILBI.

In recognition of the general understanding between States that activities in areas beyond national jurisdiction should be controlled primarily through the exercise of flag state control, UNCLOS reiterates the general duty upon States to cooperate while the CBD establishes a particular duty with respect to the conservation and sustainable use of biodiversity in ABNJ. It is now 27 and 28 years, respectively, since these two Conventions entered into force. Negotiation of the BBNJ ILBI thus represents a timely and historic opportunity to operationalise these longstanding existing duties to cooperate. Indeed, **in the preamble to UNGA Resolution 69/292, States “[stressed] the need for the comprehensive global regime to better address [BBNJ] ..”.**

In effect, enhanced cooperation is a form of dispute prevention, among other purposes. Rather than simply waiting for such failures to trigger disputes, it is far preferable that States improve the way they cooperate on matters related to BBNJ so as to remedy such failures and so avoid potential disputes. In subsequent Briefs, WWF has suggested three principal cooperation innovations that should form the cornerstones of an enhanced cooperation and dispute prevention regime:

- (i) **Establishing a BBNJ Conference of the Parties (COP) with a broad mandate to include acting as a global ‘voice for the oceans’** not only in ensuring States, acting individually and collectively through sectoral bodies, manage activities within their jurisdictions and competencies to meet the expectations of the international community for the conservation and sustainable use of biodiversity but also in ensuring that science is fostered and marshalled to better understand the pressures faced

by oceans ecosystems, habitats and species and effectively communicated to those responsible for the management and control of polluting activities, including terrestrial activities.

- (ii) **Encouraging States with an interest in the BBNJ of a region to seek to establish or identify regionally appropriate ‘enhanced cooperation’ arrangements** to which the COP could delegate some of its mandate at the request of interested States.
- (iii) **Establishing an obligation upon member States of competent sectoral bodies to make decisions that not only give effect to the provisions of all applicable international law (not just UNCLOS) but also to pertinent decisions of bodies established under international law.**

In urging States to give themselves the option of establishing regional arrangements for enhanced cooperation, WWF would like to emphasise the need for oversight arrangements through which States can effectively hold each other to account. **Regional arrangements are needed that can facilitate both the cross-sectoral and cross-jurisdictional cooperation needed to deliver ecosystem-based, integrated oceans management.**

WWF is proposing that any and all States with a declared interest in a region would be encouraged to develop cooperation and accountability arrangements uniquely tailored to the ecologies, cultures, uses and values of that region. **This approach could deliver the holistic management States say they want of a BBNJ ILBI that moves beyond the *status quo*.**

Such ‘regional implementation’ arrangements should be at the oceanic regional scale, rather than at the sub-regional seas scale or at the global one-ocean scale, because this is the scale at which ecological and political realities best align. Effective outcomes for BBNJ are very likely to require trans-jurisdictional cooperation involving adjacent coastal States as well as cooperation between sectors sharing use of the same ocean space. This is particularly true for migratory and broadly distributed species.

**WWF has submitted proposals for two new Articles for inclusion in Part I General Provisions** that would set the architecture for an enhanced cooperation regime for BBNJ that could be elaborated, as necessary, in subsequent Parts.

WWF’s IGC4 brief on Dispute Prevention and Settlement can be found [here](#).

WWF’s BBNJ Library of documents for IGC4 is [here](#). WWF’s ‘IGC4 Shadow Outcome’ brief can be found [here](#).

Thank you.