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**“Agreement on Marine Biological Diversity of Areas Beyond National
Jurisdiction: Achievements and Expectations”**

Remarks

by

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The United Nations adopted a historic Agreement 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, known colloquially as the ‘BBNJ Agreement’, on 19 June this year. After nearly 20 years of discussions, this Agreement is the first comprehensive and cross-sectoral ocean treaty in decades. It provides tools to strengthen the management of activities in vast ocean areas. In turn, this assists us in addressing threats to the health and resilience of marine ecosystems.

As the Secretary-General of the Intergovernmental Conference tasked with elaborating the Agreement’s text, it is immensely gratifying on a personal level to have seen the process brought to its conclusion. Given the urgency of taking action to reverse the precipitous decline in ocean health, I am also pleased that the Agreement has been signed by over 80 States, including the United States, since it opened for signature in September.



The BBNJ Agreement is a fitting focus for this inaugural event of a new chapter of the American Society of International Law given ASIL's mission to foster the study of international law and to promote international relations on the basis of law and justice. On the one hand, the Agreement marks a highly significant development in the law of the sea. On the other hand, in an age in which we often hear of the demise of multilateralism, the adoption of this Agreement demonstrates that this mission remains very much worth pursuing.

In today's remarks, I will situate the Agreement in its broader context, provide a brief overview of key provisions, and offer some thoughts on its legal innovations.

The BBNJ Agreement becomes the third implementing agreement to the United Nations Convention on the Law of the Sea. The Convention, which was adopted over forty years ago, is often called the 'constitution' for the ocean and remains the legal framework for all ocean activities.

The Convention establishes various maritime zones under the sovereignty or jurisdiction of coastal States and beyond. The two areas beyond national jurisdiction, which are the focus of the BBNJ Agreement, are the high seas and the international seabed area. In the high seas, States have certain freedoms under the Convention, including of navigation, fishing and scientific research. For its part, the international seabed area and its resources are subject to the regime of the common heritage of humankind. Exploration and exploitation of the mineral resources of that area are to be carried out pursuant to rules and regulations developed by the International Seabed Authority.

Other ocean-related treaties regulate certain activities taking place in areas beyond national jurisdiction – including in relation to fishing and shipping. However, up to now there had been no overall cross-sectoral management mechanism, leaving geographic and thematic gaps in the governance framework. The BBNJ Agreement significantly strengthens the prospects for the effective and cross-sectoral governance of areas beyond national jurisdiction, which amount geographically to over two-thirds of the ocean.





Turning to some specifics, the BBNJ Agreement addresses four key elements, together with various cross-cutting issues.

First, the Agreement addresses marine genetic resources, or MGRs, including the fair and equitable sharing of benefits. MGRs are materials of marine plant, animal, microbial or other origin which contain functional units of heredity of value. MGRs have many potential valuable uses, from bioremediation to medicine, and are a growing area of research, including in the biotechnology sector. The Agreement seeks to address the imbalance in States' capacity to access and carry out research and development in this respect. It does so by providing for obligations to share monetary and non-monetary benefits arising from activities with respect to MGRs and digital sequence information on these resources in a fair and equitable manner. Non-monetary benefits are to be shared in the form of access to samples, open access to scientific data, and capacity-building and transfer of marine technology. Monetary benefits will be shared through payments to a special fund to provide capacity-building for developing States and to assist them to implement the Agreement until such time as the Conference of the Parties decides on other modalities.

Second, the Agreement provides for procedures for the establishment and implementation of area-based management tools, or ABMTs, including marine protected areas. ABMTs are essentially tools to manage sectors or activities within a geographically defined area in order to achieve particular conservation and sustainable use objectives. Such measures, which may include restricting particular activities, are vital for protecting and restoring ecosystems and strengthening resilience to stressors, including those related to climate change. To the extent that certain existing bodies have competence to establish sectoral ABMTs, including in relation to fishing, seabed mining, and shipping, the Agreement envisages consultations and cooperation with such bodies, as well as with other relevant stakeholders, including civil society, the scientific community, the private sector, and Indigenous Peoples and local communities.

Third, the Agreement elaborates on obligations under the Convention relating to environmental impact assessments or EIAs. It establishes processes, thresholds and other requirements for conducting and reporting assessments. For example, parties





are required to conduct a screening of a planned activity under their jurisdiction or control that takes place in areas beyond national jurisdiction when that activity may have more than a minor or transitory effect on the marine environment, or when the effects of the activity are unknown or poorly understood. If there are reasonable grounds for believing that the activity may cause substantial pollution of or significant and harmful changes to the marine environment, an EIA shall be conducted. The decision on whether planned activities are allowed to proceed, following an EIA, will be taken by the Party that has jurisdiction or control over the activity.

Finally, the Agreement contains significant provisions on capacity-building and the development and transfer of marine technology. These aim to ensure that all States can effectively implement their obligations. Parties are required to cooperate in assisting other Parties to achieve the Agreement's objectives through capacity-building and the development and transfer of marine technology. Modalities for doing so are provided. These include that the transfer of marine technology take place on fair and most favourable terms, including on concessional and preferential terms, and in accordance with mutually agreed terms and conditions. Significantly, dedicated funding sources for such capacity-building are established under the Agreement.

The Agreement sets up various institutional mechanisms to support States Parties in realizing its aims, including a Conference of the Parties and various subsidiary bodies, a Clearing-House Mechanism and secretariat.

Taken as a whole, this new Agreement develops the law of the sea in several respects.

First, the Agreement fills certain regulatory gaps or addresses grey areas, for example with regard to marine genetic resources and marine protected areas. It thus provides regulatory certainty for both States and private actors involved in various sectors.





Second, it operationalizes already existing provisions of the Convention. This includes for EIAs, as I noted previously. It also does so in relation to the dissemination of information and knowledge from marine scientific research, and modalities for the development and transfer of marine technology.

Third, it incorporates various elements from international environmental law into the law of the sea. This includes recognition of the polluter-pays principle, the precautionary approach or principle, the ecosystem approach, the ocean-climate nexus, and the issue of plastic pollution. Fairly novel in the law of the sea, though familiar to international environmental law, it establishes a facilitative implementation and compliance committee.

Fourth, the Agreement contains prominent references to the traditional knowledge of Indigenous Peoples and local communities, and a strong focus on gender responsiveness and balance, reflecting current understandings as to the significance of these issues.

Finally, while the Agreement's provisions on dispute settlement are based on the Convention, with adaptations for non-Parties, this is the first global Agreement since the Convention to provide for the possibility of requesting an advisory opinion from the International Tribunal for the Law of the Sea.

It bears mentioning that this Agreement is grounded in scientific approaches. Science plays a fundamental role in the provisions on decision-making for ABMTs and EIAs. Scientific understanding is also essential to appreciating the provisions on MGRs and technology development and transfer. Technical know-how, relating to, for instance, geospatial technology, will also prove essential in implementing the Agreement's provisions in practice. Lawyers interested in this Agreement cannot, therefore, afford to be siloed. They must reach out to other disciplines and embrace crossing the science-policy interface.

Before I conclude, allow me to emphasize, in the footsteps of the Secretary-General of the United Nations, the critical importance of seeing this Agreement





enter into force as soon as possible. Our ocean, our planet and our livelihoods are under severe strain, including from the triple planetary crisis of climate change, pollution and biodiversity loss. The effective implementation of this Agreement will be key in tackling that three-pronged threat. It will also assist in reaching global ocean-related targets, including the '30 by 30' target under the Kunming-Montreal Global Biodiversity Framework. Rapid entry into force, on as universal a basis as possible, must be the aim. I trust that we can rely on your support in this endeavour.

Allow me to congratulate you on the founding of this new chapter of ASIL and wish you well as you begin your activities.

Thank you.

