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MARIPOLDATA Ocean Seminar

Institutional Arrangements for the new BBNJ Agreement - Where are we now?

21st April, 2021

Guest Speaker: Nichola Clark

Nichola A. Clark is an Officer on the Protecting Ocean Life on the High Seas team at the Pew Charitable Trusts, where she follows the negotiations for the new high seas treaty. Nichola is also a PhD candidate at the University of Wollongong's Australian National Centre for Ocean Resources and Security (ANCORS) where her research focuses on area-based management tools and institutional arrangements for the BBNJ agreement. She is particularly interested in thinking about how the BBNJ Agreement will interact with existing regional and sectoral organizations without 'undermining' them. Nichola is also a member of the sixth cohort of Homeward Bound, a global leadership program for women in STEMM.

Prior to ANCORS and Pew, Nichola worked on international fisheries issues at the National Oceanic and Atmospheric Administration (NOAA) and also on deep-sea and high-seas research at the Institute for Advanced Sustainability Studies. She received her Masters degree in Environmental Management from Duke University.

We welcome Nichola Clark to the MARIPOLDATA Ocean Seminar, who presents her work on Institutional Arrangements for the new BBNJ Agreement.

Reading Material for the Session:

Clark, N. Institutional Arrangements for the new BBNJ Agreement: Moving beyond global, regional, and hybrid' (2020) *Marine Policy*.

Current Draft Text for negotiation at IGC-4. Retrieved from: <https://www.un.org/bbnj/content/fourth-substantive-session>

The monthly **MARIPOLDATA Ocean Seminar Series** offer a virtual space to get information and engage in exchanges on ocean governance issues, through presentations by international experts from academia, governments, international organisations and civil society.

To register: Please contact ina.tessnow-vonwyssocki@univie.ac.at, indicating your name and institution.

More information: [MARIPOLDATA Ocean Seminar Series](#)



1. General Context

- International negotiations for a new legally binding agreement for the conservation and sustainable use of marine biodiversity beyond national jurisdiction are ongoing
- Main themes of the Agreement under discussion are: Marine genetic resources (MGRs), Area-based management tools (ABMTs), Environmental Impact Assessments (EIAs) and capacity building and the transfer of marine technology (CB&TT)
- The institutional design is still under discussion with only one further Intergovernmental Conference (IGC) (planned for August 2021)
- Envisaged institutional arrangements for the new agreement are: A Conference of the Parties (COP), a Scientific and Technical Body (STB), a Secretariat and a Clearing House mechanism (CLHM), potentially further bodies such as an Implementation/Compliance Committee

2. An Introduction to the BBNJ Negotiations

Reading: Draft text for IGC-4; retrieved from: <https://www.un.org/bbnj/content/fourth-substantive-session>

Governments are currently negotiating a new legally binding agreement for the conservation and sustainable use of marine biological diversity beyond national jurisdiction.

The general contents of the agreement structure are defined within the so-called “package”, including Marine Genetic Resources (MGRs), Area-based management tools (ABMTs), including marine protected areas (MPAs), environmental impact assessments (EIAs), and capacity building and the transfer of marine technology (CB&TT).

However, the institutional design of this agreement is still under negotiation and there are different ways how this could look like.

Some questions are:

- Which institutions are needed for implementation of the agreement?
- Who will be responsible for ultimately taking decisions?
- And how will the BBNJ agreement find its place in international ocean governance with the many existing frameworks, institutions and bodies?

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The BBNJ discussions have commenced with an Ad Hoc Informal Working Group and Preparatory Committee meetings before the Intergovernmental Conferences (IGCs) started in 2018.

Throughout the IGC sessions negotiators have discussed draft texts for the new agreement (See most current text here: <https://undocs.org/en/a/conf.232/2020/3>.)

Institutional designs of the two already existing implementation agreements under the United Nations Convention of the Law of the Sea (UNCLOS), namely the 1994 Agreement, implementing part XI and the United Nations Fish Stocks Agreement (UNFSA), differ from one another in various ways, as explored by Nichola Clark in her recent article. How the institutional design of the agreement under negotiation will look like will depend on future discussions among state and non-state actors throughout the intersessional period and the outcome of the planned to be last IGC, postponed to 2022 due to the Covid-19 pandemic.

In her article, Nichola Clark clarifies the different approaches to institutional arrangements, envisaged by the states (global, regional and hybrid); and the different interpretations of these. She also presents on the current draft text as it stands now and where the negotiations are currently at, taking into account the extended intersessional period due to the postponement of IGC-4 due to the COVID-19 pandemic.

She concludes that there needs to be a focus on the envisaged functions and organs rather than on the terms “global, hybrid and regional”- a trend which can indeed be seen in the ongoing BBNJ discussions.

3. Institutional Arrangements for BBNJ

Clark, N. Institutional Arrangements for the new BBNJ Agreement: Moving beyond global, regional, and hybrid' (2020) *Marine Policy*.

Presentation by Nichola Clark

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4. Questions & Discussion

Which body to be responsible for the BBNJ Secretariat?

There have been suggestions for UN DOALOS to take on the role of the BBNJ Secretariat, while other states would prefer a new body to be established for this task. According to Nichola, a robust treaty would probably require the establishment of a new body to take on the responsibilities of the Secretariat. There are some uncertainties regarding the appointment of staff for the Secretariat if it was to be under UNDOALOS in case of differing member states under the different agreements. Moreover, the risk of budgetary constraints would apply to both a secretariat under UNDOALOS and a newly established body: also under the existing UNDOALOS, to take on the additional role, resources would be needed to ensure staff of the Secretariat working on BBNJ in full-time positions. Additional sources of funding can be reflected upon, even the ideas of particular states sponsoring the Secretariat came up.

The role of the International Seabed Authority

There has been the offer of the international Seabed Authority (ISA) to support the BBNJ agreement. However, there are factors that need to be considered, such as the travel to Jamaica for different state delegations, which results more difficult than in other places. The Scientific and Technical Body of the BBNJ agreement would need to consist of experts but remain transparent and allow for observers at their meetings.

Clearing House Mechanism

There are discussions to use existing bodies as the BBNJ Clearing House Mechanism (CLHM), versus establishing a new body. Under discussion is the IOC-UNESCO, the ISA, as well as a newly established mechanism.

Nichola Clark emphasizes that the clearinghouse mechanism is often projected as a “silver bullet” by policy makers. Scientists are concerned and underline that it would need to be more than a data repository.

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Conference of the Parties

While there is general agreement that the Conference of the Parties (COP) is meant to be the decision-making body for BBNJ, there are ongoing discussions regarding the decision-making procedures. Under international law, consensus ought to be aimed at, however, if consensus cannot be reached, there are other options to prevent one state blocking a decision. Decision-making by a 2/3 majority vote is one option when consensus cannot be reached. The ocean as a global common need to be put into perspective when decisions are made that affect marine biodiversity in areas beyond national jurisdiction. This also questions the possibility of “opt-out” provisions that would give states a choice to object to certain terms of the agreement while keeping other terms of the agreement intact.

Experiences from CAMLR consensus-based negotiations show a needed time-period of 5+ years to decide on the Ross Sea MPA.

Civil Society and the subsidiary bodies of BBNJ

How can the perspectives of civil society be integrated into the scientific and technical body or the clearing house mechanism?

In prior discussions, there was the idea for civil society to be able to propose MPAs, which is no longer in the draft text and increasingly also opposed by NGOs. The reason behind this is a practical one, as MPA proposals by NGOs might not achieve state support before the COP and could be turned down at this stage, resulting in a failure of establishments of MPAs.

Regarding the Scientific and Technical body, Nichola’s view is to have independent scientists who are not representing any country, which would allow for researchers from civil society to engage. Observers should be allowed in meetings.

We thank Nichola Clark for her insights into the current BBNJ negotiations and where we are with regards to institutional arrangements and all Ocean Seminar Series Participants for engaging in the discussion.

We are looking forward to the upcoming Sessions and will soon announce the program for the second half of 2021!

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