



Book - Unit 4 - Convention on Biological Diversity

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Course: Introductory Course to the International Legal Framework on Marine Biodiversity

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1. Introduction

The Convention on Biological Diversity (“CBD”) was negotiated under the auspices of UNEP, adopted in 1992 and entered into force on 29 December 1993. It has 193 parties (as of April 2014).

The CBD is one of the outcomes of the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, and establishes a global legally binding framework for the conservation of biodiversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Since the Convention on Biological Diversity is examined in the e-course Introduction to the Convention on Biological Diversity, this unit focuses on the applicability of the CBD to marine biodiversity.

2. Applicability

Articles 4 and 22 primarily determine the applicability of CBD to marine biodiversity. Even though there is vast scope for action within the CBD framework, the effectiveness of multilateral environmental agreements is increasingly viewed as dependent on their interaction with other international regimes and bodies.

Article 22 on 'Relationship with other International Conventions' stipulates in paragraph (1) that the Convention shall not affect rights and obligations under other existing international agreements except where their exercise "would cause a serious damage or threat to biological diversity." Paragraph (2) determines that parties to the CBD "shall implement this Convention with respect to the marine environment consistently with the rights and obligations of States under the law of the sea." Whereas paragraph (1) could be regarded as establishing the supremacy of biodiversity obligations, paragraph (2) ensures that this supremacy does not affect the balance between rights and obligations (or jurisdictional balance) within the law of the sea, most importantly UNCLOS. It does not say that the rights and obligations under the law of the sea are not constrained by the supremacy of biodiversity obligations; which they are! But the threshold of "serious damage or threat" ensures that this supremacy is not automatic.

The manner in which they are constrained is indicated by article 4 on 'Jurisdictional Scope'. This provision effectively distinguishes between 'areas within the limits of national jurisdiction' and beyond.

Areas beyond national jurisdiction

Article 4 limits the discretionary powers of States on the high seas in the case of processes and activities carried out in areas beyond national jurisdiction. Beyond the limits of national jurisdiction, *inter alia*, the high seas and the area, only the CBD provisions on processes and activities carried out under the jurisdiction or control of states are applicable. Fishing on the high seas is an obvious example of such an activity. Flag states that become parties to the CBD thereby accept certain obligations in relation to fishing by their nationals, both natural and juridical, and vessels on the high seas.

The limitation mentioned at the outset is a significant one as the CBD's obligations on processes and activities contained in articles 3, 5, 7(c) and 8(l) are not very specific. Article 3 obliges states "to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." The wording of this obligation is similar to that in article 194(2) of the UNCLOS Convention. However, the biodiversity-focus of the CBD means that the term "environment" has a broader meaning here in comparison with the UNCLOS Convention. The obligation has therefore broadened as well. Articles 194.4 and 5 of UNCLOS contemplate the possible interference of conservation measures in exercising rights in UNCLOS. According to these provisions, States can take measures to protect and preserve rare or fragile ecosystems that do not unjustifiably interfere with activities carried out by other States.

Article 7(c) of the CBD requires states to "identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques." Article 8(l) requires states to regulate or manage processes and activities where a significant adverse effect on biological diversity has been determined pursuant to article 7. These three provisions are complemented by article 5, which obliges states to cooperate "in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity."

Areas within national jurisdiction

In areas within the limits of national jurisdiction, which, *inter alia*, include the EEZ and the legal continental shelf, the provisions of the CBD are fully applicable. That is, they apply to components of biodiversity (for example a particular species or habitat) as well as to processes and activities carried out under the jurisdiction or control of states.

Regarding components of biodiversity, the provisions of the CBD apply in principle in a similar way to the marine environment as to the terrestrial environment. States are required, for example, by article 6 to “develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity” and to integrate these, as far as possible and as appropriate, into relevant sectoral or cross-sectoral plans, programmes and policies.

Moreover, article 7 lays down identification and monitoring obligations, and article 8 obligations on ‘in-situ conservation,’ for example, through the establishment of a network of protected areas where measures apply to conserve one or more components of biodiversity, or by preventing the introduction of, controlling or eradicating alien species which threaten ecosystems, habitats or species.

3. Strategic Plan for Biodiversity (2011 - 2020)

CBD COP-10 adopted the revised and updated Strategic Plan for Biodiversity, including the Aichi Biodiversity Targets, for the 2011-2020 period. Most targets may apply to marine and coastal biodiversity, and several targets refer specifically to issues dealing with the conservation and sustainable use of marine and coastal biodiversity.

Parties need to update their national biodiversity strategies and action plans to support the implementation of the Strategic Plan and the mainstreaming of biodiversity at the national level. COP-10 additionally recommended number of measures to achieve these targets, including certification and labelling schemes, improved border controls and quarantine, water and waste management, use of ecosystem based approaches and the establishment of recovery plans for depleted species, elimination of harmful subsidies to fisheries, effective and sustainable management of protected.

Some Aichi Targets related to Marine and Coastal Biodiversity

- Target 6: By 2020, all fish and invertebrate stocks and aquatic plants are managed and harvested sustainably, legally and applying ecosystem based approaches, so that overfishing is avoided, recovery plans and measures are in place for all depleted species, fisheries have no significant adverse impacts on threatened species and vulnerable ecosystems and the impacts of fisheries on stocks, species and ecosystems are within safe ecological limits.
- Target 7: By 2020, areas under agriculture, aquaculture and forestry are managed sustainably, ensuring conservation of biodiversity.
- Target 8: By 2020, pollution, including from excess nutrients, has been brought to levels that are not detrimental to ecosystem function and biodiversity.
- Target 9: By 2020, invasive alien species and pathways are identified and prioritized, priority species are controlled or eradicated and measures are in place to manage pathways to prevent their introduction and establishment.
- Target 10: By 2015, the multiple anthropogenic pressures on coral reefs, and other vulnerable ecosystems impacted by climate change or ocean acidification are minimized, so as to maintain their integrity and functioning.
- Target 11: By 2020, at least 17 per cent of terrestrial and inland-water areas and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscape and seascape.

4. Marine and Coastal Biodiversity Programme of Work

As a framework convention, the CBD needed further implementation efforts to tailor it to concrete issues and to set priorities. For this purpose, the COP has so far developed seven Thematic Programmes and fourteen Cross-Cutting Issues, which are integrated into the Thematic Programmes.

The Thematic Programme on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity (Jakarta Mandate) was adopted by Decision II/10 at COP-2 (1995). The programme of work for the Jakarta Mandate was first adopted at COP-4 (1998) but has been elaborated at later COPs, most recently at COP-10 (2010). The programme of work aims at assisting the implementation of the Jakarta Mandate at the national, regional and global levels and identifies 5 key programme elements:

1. Identification of ecologically or biologically significant areas (EBSAs) and scientific and technical aspects relevant to environmental impact assessment in marine areas
2. Impacts of unsustainable fishing such as destructive fishing practices, overfishing, and illegal, unreported and unregulated (IUU) fishing on marine and coastal biodiversity
3. Impacts of ocean fertilization on marine and coastal biodiversity
4. Impacts of ocean acidification on marine and coastal biodiversity
5. Impacts of human activities on marine and coastal biodiversity

5. Ecologically or biologically significant areas (EBSAs)

In 2008, COP-9 adopted a set of scientific criteria to be used by States and competent intergovernmental organizations to identify ecologically or biologically significant marine areas in need of protection in open-ocean waters and deep-sea habitats. Once the EBSA are identified, States and competent organizations may adopt enhanced conservation and management measures.

CBD scientific criteria for ecologically or biologically significant areas (EBSAs)

1. Uniqueness or Rarity
2. Special importance for life history stages of species
3. Importance for threatened, endangered or declining species and/or habitats
4. Vulnerability, Fragility, Sensitivity, or Slow recovery
5. Biological Productivity
6. Biological Diversity
7. Naturalness

COP-10 requested the Executive Secretary to organize a series of regional workshops to facilitate the description of areas meeting the EBSA Criteria. The CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) will prepare reports based on information from the regional workshops, setting out details of areas that meet the scientific criteria for consideration by the COP and submission to relevant international organizations, Parties and other Governments.