THE NATIONAL ASSEMBLY OF SEYCHELLES

REPORT OF THE INTERNATIONAL AFFAIRS COMMITTEE

ON THE

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
(Submitted for Ratification as per Article 64 (4) of the Constitution)

The Committee has considered this Convention and presents its report thereon to the 7th Assembly. This is the International Affairs Committee's first special report on treaties for the year 2024, laid before Parliament in accordance with Article 64 (4) of the Constitution of the Third Republic of Seychelles.

The International Affairs Committee (IAC) has the parliamentary responsibility for scrutinizing all international agreements submitted to the National Assembly by Recommendation of the President of the Republic of Seychelles.

The report addresses this Convention that has been reviewed and considered at the meeting of the IAC on *Tuesday 05th March 2023* with a delegation from Department of Blue Economy of the Ministry of Fisheries and Blue Economy represented by:
Ms. Phillianne Ernesta, *Principal Secretary, Department of Blue Economy*
Mr. Chrissant Barbe, *Director General, Department of Blue Economy*
Ms. Veronique Nibourette, *Principal Programme Development Officer, Department of Blue Economy*
Ms. Marie-May Jeremie, *CEO of the Seychelles Conservation and Climate Adaptation Trust (SeyCCAT)*

THE INTERNATIONAL AFFAIRS COMMITTEE is mandated to work closely with the Ministry of Foreign Affairs, other governmental and non-governmental organizations on international affairs, peace, security, and defence and contribute thereon as and when necessary; maintain existing and establish new ties with foreign parliamentary organizations of interest; and perform any other tasks as may be assigned by the National Assembly.

Powers
The Committee is a Standing Sessional Committee, the powers of which are set out in the National Assembly Standing Orders, 2020, principally, SO 88-92.

Committee Staff
The Committee is assisted by the following Parliamentary Staff of the Secretariat:
Ms. Emma Didon (Secretary) and Mr. Darel Atala (Secretary Assistant).

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The following Members of the International Affairs Committee undersigned, submit this Report dated 08th March 2024:

Hon. Waven William
Chairperson

Hon. Wavel Woodcock
Vice-Chairperson

Hon. Egbert Aglae
Member

Hon. Kelly Samynadin
Member

Hon. Johan Loze
Member

Hon. Philip Monthy
Member

Hon. Philip Arissol
Member

1 SYNOPSIS OF THE AGREEMENT AND CONTENTS

1.1 Seychelles has been a signatory to The United Nations Convention on the Law of the Sea (UNCLOS) since its adoption in 1982, officially ratifying the Convention in September 1991. This lays down a comprehensive regime of law and order in the world's seas and oceans where rules governing the use of oceans and their resources are established. The development of an agreement on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) under UNCLOS by Intergovernmental Conference (IGC) was agreed upon in 2015 by the UNGA.

1.2 The BBNJ aims to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, also known as the High Seas through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination. The High seas makeup nearly half of the Earth's surface.

1.3 The BBNJ Treaty was adopted on 19th June 2023 by the UN in New York. The Agreement has 88 signatories of which 2 are parties.

The below is a summary of the Parts and Articles of the Agreement:
PART I General Provisions – Articles 1 – 8 providing for the Use of terms; General objective; Scope of application; Exceptions; Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies; Without prejudice; General principles and approaches; and International cooperation.
PART II Marine Genetic Resources, including the Fair and Equitable Sharing of Benefits – Provides for the equitable and fair sharing of benefits arising from activities in respect of marine genetic resources from ***Articles 9 – 16***. These include Objectives; Application; Activities with respect to marine genetic resources of areas beyond national jurisdiction; Notification on activities with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction; Traditional Knowledge of Indigenous Peoples and local communities associated with marine genetic resources in areas beyond national jurisdiction; Fair and equitable sharing of benefits; Access and benefits-sharing committee; Monitoring and transparency.
PART III Measures such as area-based management tool, including marine protected areas – Provides for the establishment of a comprehensive system of area-based management tools and marine protected areas through ***Articles 17 – 26*** which includes Objectives; Areas of application; Proposals; Publicity and preliminary review of proposals; Consultation on and assessment of proposals; Establishment of area-based management tools, including marine protected areas; Decision Making; Emergency measures; Implementation; Monitoring and review.
PART IV Environmental Impact Assessments – Articles 27 – 39 operationalises the convention's provisions on environmental impact assessment for areas beyond national jurisdiction by establishing requirements for conducting and reporting assessments by Parties. Articles include Objectives; Obligation to conduct environmental impact assessments; Relationship between this Agreement and environmental impact processes under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies; Thresholds and factors for conducting environmental impact assessments; Process for environmental impact assessments;

Public notification and consultation; Environmental impact assessment reports; Decision-making; Monitoring of impacts of authorised activities; Reporting on impacts authorised activities; Review of authorised activities and their impacts; Standards and/or guidelines to be developed by the Scientific and Technical Body related to environmental impact assessments; Strategic environmental assessments.

PART V Capacity-building and the transfer of Marine Technology – Articles 40 – 46 aims to assist developing states, in particular, in the implementation of the Agreement and includes Objectives; Cooperation in capacity-building and the transfer of marine technology; Modalities for capacity-building and for the transfer of marine technology; Additional modalities for the transfer of marine technology; Types of capacity-building and of the transfer of marine technology; \monitoring and review; Capacity-building and transfer of marine technology committee.

PART VI Institutional Arrangements – These provisions include ***Articles 47 – 51*** which establishes the Conference of the Parties as Article 47 followed by Transparency; Scientific and Technical Body; Secretariat; and Clearing-House Mechanism.

PART VII Financial Resources and Mechanism – ***Article 52*** sets out the provisions on Funding and the Parties' obligation to provide, within their capabilities, resources in respect of the activities intended to successfully implement the Agreement including the Funding of the institutions established under this Agreement.

PART VII Implementation and Compliance – Articles 53 – 55 obligates the parties to implement the necessary legal measures to ensure implementation of this Agreement and provides for the Monitoring of implementation of the Parties' obligations and the establishment of the Implementation and Compliance Committee.

PART IX Settlement of Disputes – Provides for ***Articles 56 – 61*** on preventing disputes, the nature of disputes and methods of dispute settlements. The Articles are Prevention of disputes; Obligation to settle disputes by peaceful means; Settlement dispute by any peaceful means chosen by the Parties; Dispute of a technical nature; Procedures for the settlement of disputes; and Provisional arrangements.

PART X Non-parties to this Agreements - contains ***Article 62*** which addresses Non-parties to this Agreement and the obligation of Parties to encourage non-parties to this Agreement become Parties thereto.

PART XI Good Faith and Abuse of Rights pertains to ***Article 63*** which provides for Parties to fulfill the obligation of this Agreement in good faith without constituting an abuse of rights.

PART XII Final Provisions – Provides for ***Articles 64 – 76*** being Right to vote; Signature; Ratification, approval, acceptance, and accession; Division of the competence of regional economic integration organisations and their member States in respect of the matters governed by this Agreement; Entry into force; Provisional application; Reservation and exceptions; Declarations and statements; Amendment; Denunciation; Annexes; Depository; and Authentic texts.

Annex I – Indicative criteria for identification of areas
Annex II – Types of capacity-building and of the transfer of marine technology

2 MAIN DISCUSSION POINTS

2.1 The Importance and Scope of the Agreement

The UNCLOS is the parent instrument of the BBNJ Agreement, its main objective is to conserve the biodiversity of the high seas and ensure its sustainable use by Parties to the Agreement meaning to achieve a balanced and sustainably economic, social, and environmental development. Today, the biodiversity of the high seas is already faced with activities carried out by actors that can be both detrimental and beneficial for the biodiversity in question. The Treaty will govern the management of these biodiversity resources, ensuring that the benefits they bring are fairly and equitably distributed amongst the relevant parties especially SIDS, like Seychelles who possess the least resources to benefit from the BBNJ.

The Agreement addresses four main components and focus areas explained by DG Barbe, being i) Area-based Management Tools, ii) Environmental Impact Assessments (EIA), iii) Marine Genetic Resources (MGRs) and iv) Capacity Building and the transfer of Marine Technology (CBTMT). Each of these components are essential to the successful implementation of the Treaty. The Area-based management component includes marine protected areas (MPAs) and intends to limit the pressure of anthropogenic activities such as illegal fishing to protect the ecosystem and biodiversity of demarcated areas. The EIA component requires companies and countries to make the necessary assessments and evaluations prior to conducting activities that may majorly impact the environment and refrain from carrying them out. The CBTMT component is meant to be beneficial as it attempts to ensure that countries are equally able to implement the agreement done through sharing of technologies, data, and capacity building opportunities especially for developing states. The MGRs focus area addresses monetary and non-monetary benefits that arise from the access, collection, and utilisation of materials from marine organisms and the equitable sharing of the benefits resulting from extracting the resources. For Seychelles and other SIDS, this will help with capacity building and gaining benefits such as accessing biological samples, and other benefits arising from activities in the high seas hat have been monopolised by developed states, giving SIDS a voice by creating a framework for them amidst major actors.

All the above BBNJ components will benefit Seychelles especially in capacity building which will additionally include sharing of data, access to research facilities, institutional capacity, and enhancement of the national regulatory framework to equip the country with the tools needed to implement BBNJ. Adhering with Seychelles' aspirations of conservation, sustainability, and blue economy, the high seas protected area will help conserve Seychelles' fish stock, indirectly improving artisanal and industrial fisheries, providing food security, and promoting ocean-based jobs and revenue. Ratifying the Treaty will also enhance international relations with the strengthening of multilateral cooperation especially regionally considering the amount of signatory countries.

2.2 The Agreement's Implications on Fisheries

The Committee sought clarification on whether the Agreement extended to the preservation of species in the water column. CEO Jeremie explained that the rights to freedom established in the UNCLOS are excluded from the Agreement which is focusing rather on areas and species that may have ecological and biological value in the high seas. Therefore, the right to passage and the right to fish will not be obstructed by the treaty but will now however, be subject to check and balance processes which was absent prior to the Agreement where now, the EIA process will be triggered when activities are taking place in the high seas. The Treaty's framework enforces accountability, enabling a country to bring another to task so long as the Agreement is ratified and becomes implementable.

Following the concept of the high seas belonging to no one and everyone at once, the Members wondered whether a country could use this as a point of argument or excuse to fish for tuna in the high seas. DG Barbe explained that the BBNJ Agreement does not stand alone and will not override any Fisheries Management Agreements. In fact, all aspects of fisheries are not specifically addressed by the Agreement.

2.3 Management and Monitoring of the high seas beyond Seychelles' EEZ and Financial Mechanisms

The committee raised concerns on the country's capacity and resources to monitor and manage the BBNJ areas, specifically beyond Seychelles' EEZ. Members noted that some aspects of this concern had been addressed in DG Barbe's presentation on the various benefits of the BBNJ Treaty. CEO Jeremie acknowledged that this was also a concern the negotiation team shared as and elaborated on the emphasis the team placed on the financial mechanisms created to support Parties in implementing the Agreement. Additionally, Article 52 provides for these obligations especially for developed states who are already enterprising in the high seas and their engagement with developing coastal states meaning that the burden for performing an EIA and other processes under the treaty will fall on the actors if they have interest in an area just beyond a states' EEZ. The Agreement mechanisms would also include providing capacity and support to the coastal state to conduct oversight on the area to ensure that no infringements of rights, and negative impact on the coastal states' legitimate interests and activities are taking place especially on the MGRs.

2.4 Implications on existing joint area management agreements

The Committee enquired on how the Agreement will affect existing area management agreements such as the Mascarene Plateau jointly managed by Seychelles and Mauritius and whether the Treaty will open doors for more such agreements to be created. The Department explained that, BBNJ Agreement, under its institutional component, provides for the implementation and compliancy aspect of the agreement which will verify compliance and other institutional

components, opening doors for discussions and consultations during instances of bilateral and multilateral matters such as joint management agreements arising after the BBNJ comes into force under the Institutional Arrangements Articles meaning it will not override any other existing Agreements. The Agreement therefore establishes the necessary institutional mechanisms for such instances in effect contributing to closing the many gaps and loopholes in UNCLOS and its two prior Agreements. Groups of two or more states are therefore free to band together and collaborate on projects on the high seas by embarking on the global process under the Agreement. These projects entail that their own application procedures be undergo with the necessary Authorities (example: the International Sea Bank Authority) to be able to proceed with activities. Ratifying the Treaty protects the Parties by granting them the power to object to any activities that they may be of detriment to them once informed of the application of an activity. The matter of disputed marine territories, however, are not covered by the Agreement since the International Tribunal for the Law Of the Sea (ITLOS) deals with such matters.

2.5 Issues of Entry into force of the Agreement

The Committee expressed concern on the matter of entry into force of the Treaty, sharing the view this will not occur anytime soon, if not at all, seeing as the Agreement shall only come into force 120 days after 60 signatories have ratified, approved, accepted, or acceded to the instrument. Seychelles will in fact be the third signatory out of 88 to ratify the Agreement, a fact that greatly worries the Committee of whom question as to whether ratifying this Agreement is in the best interest of the developed signatories especially since some are already benefitting from millions from the high seas. This follows a common trend internationally where many countries become signatories but not Parties to international agreements especially when it does not benefit them. Ms. Nibourette informed the committee that the developed states do have more to lose in this case while the SIDS and developing states have much more to gain. Developed states therefore must begin walking the talk and become Party to such agreements they have already signed.

CEO Jeremie addressed the concern by informing the committee that DOALOS (Division for Ocean Affairs and the Law of the Sea), the UNCLOS Secretariat will be facilitating discussions on the matter and assist in the lobbying process. Pressure is also applied by the international community, the NGO community and private sector on the signatories that are not intent of ratifying, bringing about an expectation of accountability from the developed states who have already dragged this process for 20 years. The EU for instance, has already put ahead substantial funds to support countries in performing needs assessment reviews to enable ratification. Additionally, there are already international fora in which Seychelles participates where some actors are heavily lobbying to encourage developed states to ratify the Agreement. CEO Jeremie also informed that the SIDS are already banding together across the regions to implement the Agreement. The Chair, Hon. William proceeded to commit the IAC to take up strategic lobbying via the parliamentary international fora.

2.6 Concerns of Seychelles on the Agreement during Negotiations

The IAC enquired on whether any parts of the Agreement were a concern to the Seychelles at the negotiation stage. CEO Jeremie informed that the most contentious part of the Agreement for the delegation and many other SIDS and developing states was MGRs. This is due to MGRs being where all the large, developed countries have all the clout, reach, capacity, and resources such as the best labs and research vessels, making millions from marine scientific research for which they fought so to not lose that privilege. What has now been agreed under the Agreement is that such actors will have to declare their activities, notify the Parties on their intentions, the data they are gathering and having track and trace systems on the data and marine genetic resources they gather.

The issue with the MGRs is linked to the sharing of monetary benefits arising from the utilisation of the genetics resources which was also a contentious subject meaning it relates directly to the financial mechanisms laid out in Article 52. CEO Jeremie pointed out that many countries were reluctant to claim the liability and responsibility to pay through a fund where other countries can gain from the income generated. Additionally, the conditions set under CBTMT specifically on the time, the nature, and the method of transfer of the Marine Technology intended to build capacity which ensures meaningful engagement with the developing countries and avoiding tokenistic actions from the developed states.

3 RECOMMENDATIONS

The IAC recognises the importance of the ratification of this Agreement, in relation to marine conservation and the sustainable use of the resources from the high seas as well as the benefits it will bring to Seychelles and other developing countries once in force.

The Committee makes the following recommendations to the Executive:

Recommendation One: Inclusion of IAC in the negotiation process as a consultative body
To ensure the valuable input of Parliamentarians in negotiation processes for contentious and important Agreements on Blue Economy, the IAC recommended that themselves or Members of the House be consulted prior and throughout the negotiation process of International Agreements. This will also enable for IAC members to lobby for ratification at different international parliamentary for a.

Recommendation Two: Utilising the diplomatic corps as Lobbying tools
The Committee recommends for the Blue Economy department to make use of the Seychelles diplomatic corps in the process of lobbying for developed countries to ratify the treaty. Lobbying can also be done via meetings with foreign and resident ambassadors accredited to Seychelles.

Recommendation Three: Establishing a line of contact to keep the IAC updated

The IAC recommends that the department establishes a line of contact with the National Assembly to keep the committee abreast with updates on the BBNJ agreement through, reports on international and national meetings and sharing of relevant information on the matter so that the IAC can assist where possible, in supporting the endeavours.