

## ICP-8 HIGHLIGHTS: WEDNESDAY, 27 JUNE 2007

On Wednesday, delegates to the eighth meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process or ICP-8) reconvened in a discussion panel on marine genetic resources (MGRs). In the morning, a discussion was held on international cooperation and coordination on MGR issues relating to current activities at the global and regional levels. In the afternoon, delegates addressed issues regarding current and future challenges. At the close of the session, a Co-Chairs' paper on possible elements to be suggested to the UN General Assembly was distributed to delegates for consideration.

### **DISCUSSION PANEL ON MARINE GENETIC RESOURCES CURRENT ACTIVITIES AT THE GLOBAL AND**

**REGIONAL LEVELS: Presentations:** Jihyun Lee, CBD Secretariat, outlined CBD Articles and CoP8 decisions relating to MGRs, such as the decision on the conservation and sustainable use of deep seabed genetic resources beyond the limits of national jurisdiction, which recommended that parties and other states take measures to control threats to MGRs and enhance scientific research. She said CBD and UN-DOALOS are collaborating on an information document regarding mitigation and threats to seabed habitat, and outlined a number of studies on high seas management to be reviewed and considered at the thirteenth meeting of CBD's Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) in February 2008.

Rama Rao, World Intellectual Property Organization (WIPO), described WIPO's work on genetic resources, which he said deals chiefly with traditional knowledge relating to genetic resources. Rao outlined a set of draft provisions developed by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) to assist policymakers in drawing up protection for traditional knowledge, including intellectual property in products derived from the utilization of genetic resources through traditional knowledge. He added that patents can be designed to include benefit-sharing and technology transfer requirements while allowing developers to market a product.

Tony Ribbink, Sustainable Seas Trust, South Africa, discussed the African Coelacanth Ecosystem Programme, which he said is a New Partnership for Africa's Development (NEPAD) marine project. He explained that the Programme is a collaborative conservation project between nine African countries bordering the Western Indian Ocean,

and that the African coelacanth, a type of fish once believed to have been extinct, has become an icon of hope for conserving Africa's marine biodiversity. He emphasized that the Programme aims to "attain, train, retain and sustain" the project and its employees, with a significant focus on capacity building.

Margaret Tivey, Woods Hole Oceanographic Institution, US, stressed the need for research to gain understanding on how deep sea hydrothermal vent organisms adapt to the high pressure, low light, little to no oxygen and high toxicity associated with vent fields. She discussed how the Biology Working Group of InterRidge, a network of ocean ridge researchers, developed a voluntary code of conduct on responsible research on deep sea hydrothermal vents. Tivey outlined guidelines for conducting scientific research to prevent, *inter alia*: deleterious impacts on sustainability of populations of vent organisms; non-essential collection; and transplanting biota or geological material between sites.

**Discussion:** Lee urged caution in applying agricultural management models to oceans, given the different economic and ecological contexts, and the cross-sectoral and multi-disciplinary nature of oceans management. She noted cooperation with the UN-Oceans Task Forces, and with FAO, UNEP and others.

In response to a comment on adoption of codes of conduct by scientists without government involvement, Tivey said scientists need to be intimately involved in regulating use of hydrothermal vent sites and therefore took the initiative in developing policies. On penalties for violating codes of conduct, she said adhering to codes is usually voluntary, except in EEZs. Tivey agreed that governments could assist with developing codes of conduct by: including input from users other than scientists; identifying policy needs such as how to evaluate effectiveness; and linking research funding to compliance with a code of conduct, as occurs in the US. In discussing whether a code would be applicable to scientists researching ocean systems other than ocean ridges, Tivey said the guidelines could be used as a blueprint for developing codes for other research areas.

When asked how ocean-dependant communities can benefit from indigenous knowledge, Ribbink urged people to find ways to make conservation more profitable than exploitation, and suggested the creation of village or community trusts whereby everyone owns and manages the resources, albeit with some government oversight. Regarding traditional communities' involvement in WIPO, Rao said voluntary funds were earmarked for indigenous peoples' participation in the IGC. On science to support international initiatives, Lee stated

that the CBD Secretariat has no scientific capacity itself, but works with consultants, expert workshops and partners such as UN-DOALOS, FAO and IUCN to ensure scientific integrity. Ribbink added that NEPAD flagship projects support scientific capacity building, training and operational guidance.

Concerning accessibility of databases, Tivey noted that while InterRidge does not have a collective database, some individual states do, and that companies and researchers funded through the US National Science Foundation are required to make their data publicly available. Rao said WIPO's databases are open and free of charge for use by developing countries. On exploration, Tivey said commercial and medicinal developments based on discoveries from deep sea vents are likely to occur in the future. Ribbink emphasized that marine protected areas (MPAs) are a cornerstone for marine conservation and are most effective when developed as a network.

Discussion also focused on: the possibility of international patents; disclosure of the origin of genetic material that contributes to a patented product; and the need for better taxonomy to support intellectual property. Ribbink added the need to market taxonomy more effectively, while Lee called for increased funding for taxonomy in developing countries.

#### **CURRENT AND FUTURE CHALLENGES: Presentations:**

Harlan Cohen, IUCN, spoke on ensuring conservation and sustainable use of MGRs. He discussed how practices within national jurisdiction might be applied in areas beyond national jurisdiction, such as through advance notification of activities, prior assessment of possible environmental impacts, publication of results and findings, and benefit-sharing. Cohen explained how the Antarctic Treaty and its Protocol on Environmental Protection could serve as a model for prior assessment of environmental impacts, and how UNCLOS provisions on international cooperation in marine scientific research and on environmental impact assessment also offer building blocks for considering MGR management in areas beyond jurisdiction.

Marcos de Almeida, Ministry of Defense, Brazil, on behalf of Cassiano Monteiro-Neto, Fluminense Federal University, Brazil, highlighted barriers to scientific research in the high seas such as high costs and lack of international cooperation, and noted the promise that MGRs hold for biotechnology uses such as aquaculture, pharmaceuticals and cosmetics. Almeida said there are approximately 1700 biotechnology research groups in Brazil, but few working with MGRs. On a legal framework for MGRs, he highlighted: an outstanding implementation issue on the relationship between the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and the CBD; the issue of biopiracy; and that MGR use beyond national jurisdiction should aim to provide benefits to all people.

Timothy Hodges, Co-Chair, CBD *Ad Hoc* Open-ended Working Group on Access and Benefit-Sharing, discussed capacity building and technology transfer challenges and opportunities, noted connections between activities on MGRs under UNCLOS and under the CBD, and outlined the CBD "Action Plan" on capacity building related to access and benefit-sharing. Regarding marine genetic research collaborations, he advocated improving the participation rates of developing countries, and underscored the importance of scientific networks. He said the institutional framework for marine biodiversity beyond national jurisdiction is poorly understood and governance structures are under debate. He emphasized the high potential of monetary and non-monetary wealth to be derived from MGRs, which he said could lead to a "win-win situation," particularly if the capacity building needs of indigenous and local coastal communities are met and their knowledge and capacity recognized. He said enhancing the understanding of the nature and use of MGRs can build capacity.

Sam Johnston, United Nations University, provided an overview of regional efforts to address genetic resource use, focusing on examples from the Antarctic Treaty system, which he said had much in common with efforts to consider MGRs under UNCLOS. Johnston observed that the Antarctic Treaty system's lack of clear rules on bioprospecting issues is restricting research and use of genetic resources by, *inter alia*: creating uncertainty for industry; hampering information exchange between scientists; and holding back government efforts to negotiate benefit-sharing arrangements. He outlined the development of an Antarctic bioprospecting database to provide scientists and policymakers with a more systematic presentation of data on the issue.

Lisa Speer, Natural Resources Defense Council (NRDC), discussed challenges related to conserving and appropriately managing MGRs, especially overfishing, destructive fishing practices, climate change and ocean acidification. She said the legal system has fallen behind managing areas beyond national jurisdiction and called for a new UNCLOS implementing agreement to consider managing MGRs in these areas, which for the long term would include a uniform procedure for environmental impact assessments and establishing MPAs for biodiversity conservation.

**Discussion:** Responding to questions on transfer of technology and capacity building within developing countries, Hodges noted a number of examples in Asia where a developed country made an initial investment to help build institutions to assess the value of a country's MGRs. Almeida emphasized that political will is vital for creating international cooperation on capacity building.

Almeida and NRDC highlighted the need to conserve the oceans because of their intrinsic value and their value to humanity. Responding to a question on assessing changes in habitats in areas beyond national jurisdiction, NRDC highlighted the need to develop MPAs in order to assess these against the areas that are not protected.

Cohen said a user's intention may not be important if common-sense practices are followed. He further explained how IUCN's list of "common-sense practices" from areas within national jurisdiction was developed, saying it was compiled from Australia and the Philippines' national legislation. He said countries could use the list as a basis for implementing the practices domestically or regionally, or developing them into codes of conduct or implementing agreements.

Participants also addressed: preventing destructive practices; better flag-state controls on vessels; international cooperation and coordination for conserving MGRs; ways to regulate activities in the deep seabed; the possibility of creating a clearinghouse mechanism for MGRs to stop repetitive sampling; and handling patents on compounds from areas within and beyond national jurisdiction in the same manner.

#### **IN THE CORRIDORS**

A few delegates were surprised on Wednesday afternoon by the Co-Chairs' circulation of an initial draft of elements to be suggested to the General Assembly, recalling that the March preparatory meeting had agreed to an open drafting group process. However, most delegates were satisfied with the change in procedure, particularly a number of those from developing countries, who felt that being able to submit textual amendments directly to the Co-Chairs would allow their views to be better represented. Others voiced gratitude that the change would reduce the time spent in "painful formal negotiations," pointing out the meeting's mandate as an informal and cooperative consultation. Only a few dissenting voices lamented that ICP-8 was spending "too much time listening and not enough time producing outcomes," and emphasized that the divergence between country positions seems narrower than at previous ICP sessions.